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Current Topics.

The Lord Chancellor on the Rule of Law.

RESPONDING to the toast of His Majesty's Judges at the customary dinner given by the Lord Mayor to members of the judiciary on Tuesday, LORD MAUGHAM, L.C., referred to a number of legal changes and appointments during the past year, and recalled that he had set up a number of important committees which included subjects of such diversity as law reporting, poor persons rules, the law of defamation and shorthand notes in court; and he expressed the hope that when he received the reports it would be possible to bring about some much needed reform. He emphasised the fact that the subjects of the King, whether residing in this country or beyond the seas, lived under the dominion of law. Our true liberties could not be interfered with except by due process of law. But it was not only on good laws that our peace and tranquillity depended. It was necessary also that they should be well administered, and this was all the more essential in such a far extending empire as ours. In many lands where British justice was administered there was the same equal justice for rich and poor, white and coloured, educated and ignorant, civilised and savage. The Lord Chancellor gave instances of what he was saying, and concluded by observing that the judges and the lawyers from the highest to the humblest throughout the empire had in this matter a single philosophy and a single creed. They stood for the ancient traditions of law and justice. Those were the ultimate reasons for their existence and they must of necessity make every effort and every sacrifice to retain those traditions unimpaired.

The Lord Chief Justice.

ON the same occasion LORD HEWART, C.J., alluded to the dispatch of legal business. There was no time, he said, when the work of the judges was greater in volume, or more punctually performed. There were people who applied the term arrears to every case set down, and who thought the whole body of cases must somehow be immediately and simultaneously tried the moment each came into existence. Perhaps that system would flourish in that happy time, fraught with untold blessings for solicitors, barristers, juries and the public, when every court would sit all the year round, seven days a week, twenty-four hours a day. Meanwhile judges would continue to the best of their ability to discharge their task steadily, vigilantly, and courageously.

Newspapers and Reports of Cases.

AMONG the several interesting subjects dealt with by Sir WILLIAM JOWITT, K.C., in the course of a speech at the fourth annual conference of the Empire Press Union was that of the statutory restrictions imposed on the reports in the non-technical Press of certain classes of cases. Referring to what he described as "legislative bricks" which in recent years had been laid by those who considered that the freedom of the Press was travelling in the direction of licence, the speaker observed that some of the bricks might be good, but they must watch carefully lest those bricks were built up into a wall. He deprecated the tendency in modern legislation to prevent full and frank reports of legal proceedings, and asked how it could appear that justice had been done unless the full light of publicity had been turned on its proceedings. The speaker instanced the limitations imposed on the reports of divorce proceedings, proceedings in the juvenile courts and some proceedings in courts of summary jurisdiction, and made reference in this connection to the Criminal Justice Act, 1925, and other recent statutes, such as the Ready Money Football Betting Act, the Betting and Lotteries Act, and the Agricultural Charges Land Act. Lawyers had their own standard law reports, but the speaker's hearers were urged to bear in mind that the newspapers were the public's law reports; that justice must be done in public, and the public to-day were the readers of newspapers. One other topic may be briefly alluded to—that of proceedings for contempt of court in which, it was observed, newspapers frequently figured. No newspaper man, Sir WILLIAM JOWITT said, desired to comment on a trial still proceeding; in that case a trial by newspaper might take the place of a trial by a judge or jury. The courts, it was intimated, had done their best to discourage such applications, but it was necessary for responsible leaders of the Press to continue to exercise that vigilance which was the accompaniment of freedom.

Housing: The Problem of Design.

A FEW weeks ago we referred in these columns to a booklet published under the ægis of the Ministry of Health, entitled "About Housing." This publication, it will be recalled, dealt in a simple manner with the housing problem from the viewpoint of public requirements, and indicated both the need of housing accommodation and the manner in which that need has been, and is being, met. Another aspect of the problem is dealt with in the recently-published booklet entitled "Houses We Live In," which is primarily concerned, not with quantity, but the quality of houses from an aesthetic standpoint. The work, which is published by H.M. Stationery Office, price 1s. net, and has been prepared by the Ministry of Health with the advice of the Central Housing Advisory Committee, conveys its message by a series of admirably conceived illustrations which exemplify the contrast between good and bad design. In a foreword the Minister of Health intimates that, if in aesthetics there can be no final judgment and within certain limits "taste" is a matter of personal opinion varying from one generation to another, it should be possible to give, in popular form, some general guidance which would be of value to those contemplating the building of new houses. He therefore asked the Housing Advisory Committee, which includes architects and representative public men and women, to give him in simple terms examples of good houses in which proper regard would be had not only to the ordinary functions of a house and to considerations of economy in construction, but also to what the Minister describes as "architectural good manners." "The Committee," Mr. WALTER ELLIOT continues, "have expressed their views in this attractive book in no uncertain way, and while there may be some differences in the degree of severity with which the houses and the features which they do not favour are regarded by others, there will, I think, be general agreement as to the beauty in design and layout of those houses and groups of houses which they have singled out for special commendation." The Committee urge that the house in which ornamentation is properly related to structural design, in which the layout and outward appearance conform with the dictates of beauty and good taste, and in which the interior is best adapted to the needs of those who live in it, need not cost more than the more ornate Tudor imitations and other "desirable villa residences" which incur their censure. The booklet should be of service not only to individuals contemplating the erection of houses for their own occupation, but also to local authorities in whose hands the responsibility of maintaining a decent standard of architecture under present conditions largely rests, and one may endorse the Committee's view that if architects and builders, owners and tenants worked together to secure sound and sensible building, our towns would become pleasant living places, and a threat to the countryside would pass away.

Solicitors' Defalcations.

DURING the recent consideration of the Solicitors Bill by the Joint Select Committee of the House of Lords and the House of Commons, of which LORD WRIGHT is chairman, the suggestion was made that some means ought to be found for providing compensation in cases where money was taken by the few "black sheep" in the profession. Mr. HERBERT WILLIAMS, M.P., supported an insurance scheme by solicitors, analogous to the third party scheme imposed some years ago on "the motoring profession." There were no administrative difficulties in that case, and the same speaker asked why solicitors could not insure themselves. Sir HARRY PRITCHARD recalled that The Law Society had considered the question of forming a relief fund to repay money lost by defalcations, and stated that the chief objection was that it was wrong in principle to require solicitors to contribute to a fund to make good the defalcations of the dishonest members of their profession with whom they were in competition. The cost to solicitors earning a small income would be severe. It was indicated, however, that the subject would receive further consideration. Sir GEORGE MIDDLETON, M.P., who had emphasised the necessity for providing compensation, said it was not a question of whether a solicitor could afford to give this protection, but of whether the public had a right to demand it, and LORD CAUTLEY thought that solicitors did not appear to realise the public feeling there was about defalcations.

The Building Societies Bill.

THE Standing Committee of the House of Commons which is considering the Building Societies Bill gave its approval to the scheme for giving certificates for well-built houses, subject to its being reviewed after it has been in operation for a reasonable period. The clause incorporating the scheme empowers the Minister of Health to give his approval to corporate bodies which set up improved standards of building, to issue certificates for buildings conforming to those standards, and arrange for indemnification against loss suffered by reason of a building for which a certificate has been issued not conforming to the standards. Introducing the clause some days earlier, the Minister of Health stated that the Committee had all along expressed a desire that the buyer should have safeguards in the quality of construction, but had rightly rejected the view that a warranty should be exacted from the building society. He intimated that it was therefore proposed to deal with the matter through the building trade, which was the appropriate body to secure sound construction. It was intended that bodies comprised of all branches of the building industry, and representatives of other interests concerned, should give certificates in respect of buildings conforming to approved standards, and the object was not merely to secure an intending purchaser against jerry-building, but to provide a remedy if jerry-building had taken place. Thus, if, by reason of bad workmanship, defects arose about which the purchaser had not been warned, and if the building firm no longer existed, the appointed body would implement the warranty given by the builder and arrange for the loss to be made good. The Minister described the scheme as the best so far placed before the Committee.

Access to Mountains.

A STATEMENT has been issued by a sub-committee of the Ramblers Association setting out its objections to the Access to Mountains Bill as it was when it left the House of Lords. The sub-committee admits a "welcome modification" of the clause relating to trespass, but points out that the penalty of a fine up to £2 "merely for walking on wild land" can be imposed under the amended Bill. The amendment, which will have the effect of ensuring that the Minister before making an order will consider the extent to which access has been allowed in the past, is approved; and a further amendment rendering it possible for the Minister to specify places where land brought under the measure may be entered is regarded as reasonable, provided that it does not result in more land being enclosed, and that the places of entry are sufficient. But, it is urged, nothing in the amended Bill eases the heavy burden put on voluntary organisations, such as the ramblers' bodies, who may wish to secure access for the general public. The sub-committee thinks that local authorities will be disinclined to help, and puts forward the view that the cost of securing access orders should be a national charge. The measure of access possible under the Bill is, it is said, still vague—the only definite thing being that it must not cause material loss to the landowner. The opinion is expressed that the harmless trespasser on the moors is better off under the present law than the law-abiding citizen will be under the law as modified by the Bill, though it is anticipated

that in certain areas close to large towns the Bill will result in an increase of disciplined access for the general public. Ramblers' organisations are urged carefully to consider the full implications of the measure before making any application for access to a specified area, and not to relax efforts to secure amendment to the clauses which provide the machinery for obtaining access orders.

The Charitable Collections (Regulation) Bill.

MENTION was made in these columns in our last issue of LORD LUKE'S proposal to exempt voluntary hospitals from the restrictive provisions of the Charitable Collections (Regulation) Bill. The matter was considered last Tuesday by the House of Lords on an amendment to exclude voluntary hospitals approved by the British Hospitals Association or by King Edward's Hospital Fund for London from the obligation to obtain a police licence. Approval of the amendment was expressed by LORD MACMILLAN, who intimated that there were no institutions more worthy of exemption from the necessity of obtaining a police licence than the voluntary hospitals, and by THE EARL OF DONOUGHMORE, who urged that the amendment was desirable in the interests of efficiency, that it was ridiculous that the hospitals should have to go to the police for permission for house-to-house collections in the area they served, and that it was most undesirable that the voluntary hospitals should be put under the municipal authorities in this way by a side wind. The amendment was, however, resisted by THE EARL OF COURTOWN, who urged that it would give undue advantage to a voluntary and non-elected association and that the application of a local hospital which did not belong to that association for a licence to make a collection might be regarded with some doubt by the police. The matter had, moreover, been fully considered by the joint committee, which had decided that it was not necessary to include voluntary hospitals. VISCOUNT BRIDPORT, Lord-in-Waiting, stated that the Government were not in agreement with the amendment, which, after further debate, was defeated by forty-seven votes to twenty-four. The committee stage was concluded on the same day, and the Bill was ordered to be reported to the house.

Sports Grounds and Town Planning.

A STATEMENT recently issued by the Warwickshire Playing Fields Association adverts to the threats to sports grounds occasioned by the continued demand for housing, particularly on the edge of some of the larger towns. Such difficulties, it is urged, are bound to occur sooner or later when the future of sports grounds has not been assured by planning schemes. Some clubs are in the hands of young people without financial resources who do not always look very far ahead, and, when they do, have not the requisite knowledge or influence to approach those who can help. The statement indicates that where a club is not in a position to raise the money to buy the land it plays on, it can approach the town council or the proper local authority which has power under the Physical Training Act, 1937, to acquire land and let it to sports clubs, with adequate guarantees, at an economic rent. The result is that the ground is acquired as an open space in perpetuity at no cost to the ratepayer and the club can obtain a lease for many years ahead. Private sports clubs and their committees are accordingly advised to look into the security of their tenure, and, if satisfied that they cannot buy the ground, to get into touch with the local authority concerned. Clubs within the county are invited to apply to the Warwickshire Playing Fields Association if they desire the association to apply to the local authority on their behalf, and they are reminded that before agreeing to use its powers—which can be exercised compulsorily if necessary—a local authority will want to be satisfied that the club in question is sufficiently substantial to guarantee the economic rent. As the matter is of more than local importance, the foregoing short indication of the facilities available has been given.

Recent Decisions.

IN *Pratt* v. *Pratt* (*The Times*, 30th June) the House of Lords upheld a decision of the Court of Appeal (83 SOL. J. 54) affirming that of FINLAY, J., to the effect that a wife's desertion was terminated by two letters which had been written by her to the petitioner within the three years prior to the filing of a petition for divorce, and which, in LORD ROMER'S words, " indicated a genuine and honest desire to see and discuss matters with her husband in the hope that that would result in their ' coming together,' in their ' making a new start,' and ' a home together in the future.' "

In *Re Eaves, deceased; Eaves* v. *Eaves* (p. 546 of this issue) FARWELL, J., held that the plaintiff's widowhood was not determined by a ceremony of marriage entered into in 1925, the said marriage having been declared null and void in 1937 on the ground that it had not been consummated; but that the plaintiff was not in the circumstances entitled to recover against the defendant, the residuary legatee of her first husband's estate, the proceeds of sale of a leasehold house given to her during her life or widowhood—the said proceeds, by a voluntary arrangement to which the plaintiff was a party, having been handed over to the defendant in contemplation of the plaintiff's second marriage.

In *Rex* v. *Wharton* (*The Times*, 1st July) the Court of Criminal Appeal (LORD HEWART, C.J., and SINGLETON and HILBERY, JJ.) gave on 30th June their reasons for allowing the appeal and quashing the conviction of one who was convicted at the Central Criminal Court of conspiracy to cause explosions and of possessing explosive substances, contrary to s. 3 (*a*) and (*b*) of the Explosive Substances Act, 1883, and who was sentenced by HUMPHREYS, J., to 10 years' penal servitude.

In *Joseph, P.* v. *Joseph, L. Z.* (*The Times*, 1st July), LANGTON, J., held that a wife who had wrongfully left her husband, announcing her intention not to return to him, and within six months had offered to resume cohabitation—an offer which the husband had rejected—was entitled to a decree of restitution of conjugal rights. The learned judge referred to *Pratt* v. *Pratt, supra*, which confirmed him in the view that a spouse, who was initially in the wrong, could put himself or herself in the right by taking the proper steps.

In *Re McEacharn's Settlement Trusts; Hobson* v. *McEacharn* (*The Times*, 1st July) BENNETT, J., held that the investment clause of a settlement which authorised investment " in or upon such stocks, funds, and securities " as the trustees should think fit, covered, in the absence of any words showing that the word " stock " was to be narrowed, investment in fully-paid shares: see *per* LORD CAIRNS and JAMES, L.J., in *Morrice* v. *Aylmer* (1874), 10 Ch. App. 148, and *Henderson* v. *Henderson's Trustees* (1900), 37 Sc. L.R. 976. *Re Willis* [1911] 2 Ch. 563, distinguished.

In *La Plata* (*The Times*, 5th July) the Court of Appeal (SCOTT, MACKINNON and FINLAY, L.JJ.) upheld a decision of BUCKNILL, J., to the effect that the steamship " La Plata " was alone to blame for a collision which occurred between that vessel and the steamship " Akti " in the Bay of Biscay. The two vessels were on nearly opposite courses, and almost end on. The nautical assessors had advised the court that it was the primary duty of each to starboard, but " La Plata " parted. " La Plata " was guilty of excessive speed in fog, and had failed to observe the rule of prudence in such cases, as defined by the nautical assessors in accordance with the rules of good seamanship in fog.

In *Lock* v. *Aberscester, Ltd.* (*The Times*, 6th July), BENNETT, J., held that where proof was given of a user of carriages drawn by horses for the required period, so as to establish a carriageway as an appurtenance, the right so acquired was one which enabled the owners of the property to which the right was appurtenant to use the way for mechanically-propelled vehicles.

Gifts from Wife to Husband.

WHEN a married woman obtained the right of free disposal of her separate property her husband became a potential object of her generosity. Lest his position should lead to undue benefits, equity invented the restraint on anticipation clause. For the future this device can no longer be used (Law Reform (Married Women and Tortfeasors) Act, 1935). Are there any other checks on a wife's freedom of disposition in respect of her husband ?

It is now settled that marriage is not one of those relationships to which the presumption of undue influence applies (*Howes* v. *Bishop* [1909] 2 K.B. 390, C.A.). Equity did not carry further the policy of the restraint on anticipation by treating the husband in the same way as the father, the solicitor, and the spiritual adviser who becomes a donee of the child, the client and the devotee. Nevertheless, it is open to the wife, as to anyone else, to prove that a transaction was, in fact, brought about by the exercise of undue influence. A young man who proved that he was under the dominating influence of an older and more experienced friend, has been allowed to set aside a gift to the latter. The special position of a wife would seem to help her in discharging the burden of proof. A husband often possesses some influence over his wife. As Lord Atkin has said, in a case decided on another ground : " It may be true that in some cases it is easy for the wife to discharge the onus which lies on her as on everyone else outside the protected classes to show that a particular contract was, in fact, procured by the undue influence of her husband " (*MacKenzie* v. *Royal Bank of Canada* [1934] A.C. 468, P.C.). Cases are few in which undue influence has been held proved where it was not presumed and there appears to be no clear decision in respect of matrimonial influence. In *Bank of Montreal* v. *Stuart* [1911] A.C. 120, the Privy Council said : " It may well be argued that when there is evidence of overpowering influence and the transaction brought about is immoderate and irrational, as it was in the present case, proof of undue influence is complete," but breach of confidence by her husband's solicitor, who ought to have properly advised her, in this case allowed the wife to impugn a guarantee by which her husband and the solicitor both benefited.

A wife, living with her husband and authorising her income to be paid to him, might find it almost impossible to recall the payments on the ground of undue influence. In other instances it may be easier, as Maugham, J., suggests in *In re Lloyds Bank, Ltd.* [1931] 1 Ch. 289, where he applied the presumption of undue influence to two persons engaged to be married. He said : " It cannot be doubted that the necessity of showing that a transaction of the nature of a large gift or conveyance to a husband was a fair and proper one, in a case where the wife has not been separately advised, may, without much difficulty, be thrown upon the husband." If all that is meant by this is that it is easier for a married woman than for other persons to prove undue influence, it is in accordance with earlier statements of the law. But the judge's previous remarks suggest that he regards a large gift as in itself evidence of undue influence. This seems unsound, for ordinarily the doctrine of undue influence necessitates the existence of a personal influence—an influence carried to a high degree—which is used to the advantage of the dominant party. Undue influence means the misuse, the abuse of influence, the undue exertion of an influence the strength of which is presumed or proved. Something more than normal matrimonial influence must be shown. To say that a large gift is in itself evidence of this looks like begging the question. Yet there are other dicta in favour of the special treatment of a married woman, although she is not within the protected classes. Lord Alverstone, L.C.J., in *Howes* v. *Bishop*. *supra*, thought that there might be circumstances in which the equitable doctrine that the onus of proof rests on the person supporting the document which creates a gift might apply to the relationship of husband and wife. In *Shears & Sons, Ltd.* v. *Jones* [1922] 2 Ch. 802 ; 128 L.T. 218, a bill of sale executed by a wife to secure payment of her husband's debt was void because the requirements as to registration were not complied with, but Russell, J., was prepared, if necessary, to avoid it on another ground. He said : " The duty was cast on the plaintiffs to see that the wife had separate and independent advice before they took from her this benefit " (128 L.T., p. 221 : this point is not reported in the Law Reports). The bill of sale was, perhaps, hastily and rashly given, but the husband was not shown to have possessed any extraordinary influence. These various dicta throw some doubt on the law as it is usually understood.

A married woman can call in aid other principles of law such as duress. Here again it may be easier to prove that a gift was made under the duress of a husband than of a stranger, for the position of the former gives him greater opportunities to exert unlawful pressure. *Talbot* v. *Von Boris* [1911] 1 K.B. 854, is an example. Further, the plea of *non est factum* is open to a wife if she is ignorant of the true nature of the document she is signing. As the advice of a husband in financial matters is often taken, he being treated as a confidential adviser, it is open to him to abuse his position of trust for his own ends by refraining from enlightening his wife's ignorance by a proper explanation. These were the circumstances in *Chaplin & Co., Ltd.* v. *Brammall* [1908] 1 K.B. 233, C.A., where, on the strength of the defendant's guarantee, goods were supplied to her husband on credit. The guarantee was declared void, Ridley, J., finding as a fact that there was no sufficient explanation of it given to her to cause her to understand what she was signing. The burden of proving lack of understanding invalidating a document is on him who alleges it, but Vaughan Williams, L.J., remarked that the plaintiffs had failed to show that the document was properly explained to the wife, thereby assuming that in the case of husband and wife the rule is otherwise : that the burden of proving ignorance is not on the wife but the burden of disproving it is on the husband. This dictum must be treated with caution for, if acted on, a married woman might, by this means, obtain some of the advantages which a presumption of undue influence gives to other persons. It must also be borne in mind that a husband, unlike a solicitor or similar person in a position of confidence, is not subject to the fiduciary duties of giving disinterested advice and refraining from abusing the confidence reposed in him. Even if a wife relies on her husband's advice there is no fiduciary relationship between them in the legal sense. Yet Vaughan Williams, L.J., seems to view them in this light.

Support for this might, at first sight, appear in the case of *Re Blake*, 60 L.T. 663, where a husband, who was his wife's trustee, claimed that she had made him a gift of a substantial part of the trust property. Kay, J., said : " The wife had no independent advice, and a gift from a *cestui que* trust to a trustee, even where the parties are in the relation of wife and husband, can only be supported by very clear and strong evidence." But the " clear and strong evidence " can only mean evidence of a definite intention to give, for the whole case rests on the question whether there was an intention on the part of the wife to destroy the trust to the extent of the property involved or only to make a loan of it. The presence of independent advice makes an intention to give easier to prove where the true object of the transaction is in doubt. The evidence was found not to be sufficiently cogent to destroy the trust. It may be noted that Kay, J., suggests that some suspicion attaches to a gift made by an ordinary beneficiary to his trustee but there is no reported authority for this opinion, though it may be reasonable to require strict evidence of an intention to benefit such a donee, especially where the subject matter of the gift is trust property.

There is no clear ruling which discriminates between a husband and a stranger in the matter of gifts, but the above mentioned cases reflect a judicial readiness to protect a wife from her own generous instincts. The way is prepared for the law to develop further. The disappearance of the restraint upon anticipation may prove a stimulus.

Company Law and Practice.

Priority of Equitable Interests in Shares.

PRIORITY as between persons who have equitable interests in shares in a company is determined by the application of the maxim *qui prior est tempore potior est jure:* the interest created earlier in point of time prevails, provided always that that interest is in other respects "equal" to the subsequently created interest, i.e., that there has been no negligence or inequitable conduct on the part of the owner of the first interest sufficient to deprive him of the protection otherwise afforded by his priority in point of time. Accordingly, where shares are registered in the name of a trustee, the equitable title of the beneficiaries prevails over that of, for example, a person who lends money to the trustee on the security of an equitable charge on the shares. Nor is the question of priority in such a case affected by the giving of notice to the company of the equitable charge; that is to say, the rule in *Dearle* v. *Hall* has no application to dealings with shares in a company. That rule, it will be remembered, determines the priority of successive assignees of equitable interests by reference not to the date of the respective assignments but to the date on which each assignee gave notice of his interest to the trustees in whom the trust fund is vested. The assignee who first gives notice has priority even though his assignment is later in point of time. This principle does not extend to shares; in the first place, shares are legal interests, and the rule applies to successive assignments of existing equitable interests, not to the creation of successive equitable interests in legal estates; and, secondly, s. 101 of the Companies Act, 1929, prohibits the entry of any trust on the register, so that the company cannot pay any attention, and is not bound to give effect, to notices of equitable interests in shares: see *Société Générale de Paris* v. *Tramways Union Co.*, 14 Q.B.D. 424; S.C. *sub nom. Société Générale de Paris* v. *Walker*, 11 A.C. 20.

The priority of an equitable interest in shares will not, then, be affected by a subsequently created equitable interest; but, in accordance with well-known principles, it is liable to be defeated by the acquisition of the legal title to the shares by a purchaser who has no notice of the equitable interest. Accordingly, when a trustee sells shares and the purchaser's name is put on the register of members, the legal title so acquired by the purchaser prevails over the beneficiaries' equitable interests which are, to adopt conveyancing language, overreached.

The possibility that an equitable interest in shares may be defeated in this way should always be borne in mind by a mortgagee of shares. Such a mortgage is usually an equitable charge constituted by the deposit of the share certificate, accompanied by a memorandum of charge, together, in some cases, with a blank transfer of the shares. This transfer the mortgagee has authority to complete and present to the company for registration, but until he has done so and his name has been put on the register, his interest remains an equitable one and liable to be defeated if the mortgagor, in fraud of the mortgagee's rights, transfers the shares to a purchaser who has no notice of the mortgage and the purchaser's transfer is registered by the company. It may be said that the possibility of such a transfer being accepted by the company can be disregarded if the mortgagee has the share certificate; and it is, of course, the practice to require the production of the certificate before a transfer is registered. Nevertheless, in a particular case, the transfer to the innocent purchaser might be registered by the company, if, for example, the mortgagor, pursuing his fraudulent course, convinced the company that the certificate was lost; and upon registration of the purchaser, the mortgagee's rights would be defeated. Nor, it would seem, has the mortgagee any claim against the company for registering the transfer without production of the certificate, even though the certificate itself states that no transfer will be registered unless accompanied by the certificate (*Rainford* v. *Keith & Co.* [1905] 1 Ch. 296; [1905] 2 Ch. 147), or the company's articles make a similar provision (*Guy* v. *Waterlow Brothers*, 25 T.L.R. 515).

The principles already discussed are exemplified by a number of cases to which I propose shortly to refer. In *Société Générale de Paris* v. *Walker*, *supra*, M, the holder of shares, deposited with S the share certificates and a blank transfer as security for a debt. Afterwards he fraudulently executed a blank transfer in respect of the shares and deposited it with A, also as security for a debt, at the same time informing A that he had lost or mislaid the certificate. A completed the blank transfer and forwarded it to the company, offering an indemnity against any claim in respect of the lost certificate: but the company refused to register the transfer. A brought an action against S for a declaration of title to the shares and to restrain S from dealing with the shares.

The House of Lords decided that nothing had happened to displace the original priority of S's equitable claim. A had not been put on the register and could not claim to have the legal title on that ground: the learned lords appear to have considered, however, that something short of actual registration might suffice to give the transferee the legal title, viz., if he had, as against the company, an absolute and unconditional right to be registered. They held, however, without detailing the circumstances which would give rise to such a right, that in the present case A had no such absolute and unconditional right, for two reasons: (1) by the company's articles shares were only transferable by deed, and the transfer to A was not the transferor's deed, since it had not been re-delivered by him after the blanks were filled in; (2) the share certificate stated that no transfer would be registered until the certificate had been delivered to the company, and as the transfer to A was not accompanied by the certificate, the company was fully entitled to refuse to register the transfer. In short, A had not acquired the legal title to the shares, so that the equitable mortgage of S had not lost the priority attaching to it by virtue of its earlier creation.

In *Moore* v. *North Western Bank* [1891] 2 Ch. 599, Romer, J., expressed the law in these words: "As between two persons claiming title to shares in a company which are registered in the name of a third party, priority of title prevails, unless the claimant second in point of time can show that as between himself and the company, before the company received notice of the claim of the first claimant, he, the second claimant, has acquired the full status of a shareholder; or at any rate that all formalities have been complied with, and that nothing more than some purely ministerial act remains to be done by the company, which as between the company and the second claimant the company could not have refused to do forthwith; so that as between himself and the company he may be said to have acquired . . . a present, absolute, unconditional right to have the transfer registered, before the company was informed of the existence of a better title." In that case the trustee of a will, in whose name shares were registered, absconded after borrowing money from the bank on the security of a charge on the shares, constituted by the deposit of the certificate together with a blank transfer. The bank completed the transfer and forwarded it to the company, whose directors had power under the articles to withhold approval of any transfer. Before the bank was registered or the directors had approved the transfer, the beneficiaries under the will brought

an action for a declaration that the bank was not entitled to the shares. It was held that the priority of the beneficiaries' equitable interest had not been displaced, since the bank was neither on the register nor had it an absolute and unconditional right to registration since the directors had not approved the transfer.

The same decision was reached in *Ireland* v. *Hart* [1902] 1 Ch. 522, on facts which were very much the same as those in *Moore's Case*, except that under the articles of the company the directors had no power to refuse to register transfers. It was argued that the claimant second in point of time, who had presented a completed transfer for registration, had a present absolute and unconditional right to be registered (since the directors had no power to withhold registration) and was accordingly to be treated as having the legal title and, for that reason, priority. It was held, however, that the directors, not having passed any resolution as to the transfer, there was no present absolute and unconditional right to be registered.

I have not found any case in which the facts have been held to give rise to this present absolute and unconditional right, so that a legal title to shares has been acquired by something falling short of actual registration. It seems clear, however, that no such right can exist unless and until the directors have passed the transfer, since even when they have no discretion to refuse to register a transfer they are entitled to have a reasonable time to make inquiries for the purpose of finding out if the transfer is in order. It may be suggested that if a transfer has been passed by the board and instructions given to the secretary of the company to make the necessary entries in the register, the transferee would have a present absolute and unconditional right to be registered and so would be treated as having the legal title, although his name was not on the register, inasmuch as all that remained to be done would be the purely ministerial act of entering his name in the register.

In the cases already mentioned the original priority of the claimant first in point of time remained unaffected, the second claimant not having acquired the legal title to the shares; for a case where registration of the second claimant operated to defeat the priority of the earlier equitable interest, see *Guy* v. *Waterlow Bros.*, *supra*. There the shareholder mortgaged his shares by deposit of the certificate together with a blank transfer; subsequently, by means of a forged certificate, he sold the shares to a purchaser, whose transfer was registered by the company. It was held that the purchaser's title prevailed. It must not be thought, however, that an equitable mortgagee of shares can take no steps to protect himself against the possibility of the registration of a transfer to a subsequent purchaser; for while it is true that the company is not bound to recognise his equitable interest, he can give the company notice in lieu of distringas, the effect of which is that the company must before registering any transfer of the shares notify him of the request to transfer and so give him an opportunity to go to the court and obtain an injunction to restrain the registration of the transfer.

A Conveyancer's Diary.

Rights of Support: *Rylands* v. *Fletcher*.

Various interesting questions relating to the rights and liabilities of adjoining owners and occupiers of property were suggested by a recent unreported case. The facts were as follows: The plaintiff was the owner and occupier of one of a row of houses. At the bottom of her garden was a wall. Beyond that was a narrow passage, the soil of which was vested in X, and over which the plaintiff had a right of way. The other side of the passage was formed by another wall, beyond which the ground rose steeply. The defendants' land abutted on the wall but did not include it, and on the extreme edge of their property, but not supported by the wall, was an iron fence. The land on each side of the iron fence had always been in two separate ownerships with the fence as the boundary between them. Before about 1885 the ground had lain in a continuous slope on both sides of the fence, as was evidenced by the existence of gates in the fence, which now (if they were opened) would lead from the defendants' land down a sheer drop of several feet into the passage. In or about 1885 the predecessor in title of X, who then owned the land on the passage side of the fence, was minded to develop his estate by building a row of houses. To this end he cut the soil flat. This involved his making a sheer drop from the fence. Abutting on this drop he put up the wall, which may or may not have been supposed to be a retaining wall, but was not adequate as such, as the event showed. In the course of years he and his successors sold off the houses on their land in fee simple, retaining the ownership of the wall and the soil of the passage. In about 1908 the defendants' predecessors in title undertook certain levelling operations on their side of the fence, which involved the shifting of soil from other parts of their land to the side near the fence. But there was no heaping of soil within three or four feet of the fence. In 1928 part of the wall collapsed, bringing down part of the fence, blocking the right of way, and doing certain damage. The plaintiff demanded that the defendants should rebuild it, but they refused, and it was in fact rebuilt by some person or persons unknown. In 1939 the wall and fence again collapsed, blocking the right of way and damaging the property of the plaintiff. The defendants again disclaimed all liability, on the ground that the collapse was due to the very bad weather of last December and January, which they said had undermined the wall and had brought down their fence and some of their soil. X was for some reason not available: if he had been, the plaintiff's advisers would have had to consider proceeding against him. But, as it was, they took action against the defendants, claiming for trespass (by allowing soil to fall into and remain in the plaintiff's garden), damages for obstruction of the right of way (by allowing the debris to remain in it), damages in respect of the injury to the plaintiff's property, and for an injunction restraining the defendants from maintaining their fence and property in a state likely to cause collapse of the wall. The defendants denied negligence and were acquitted of it, but damages were ultimately awarded against them, under *Rylands* v. *Fletcher*, for the collapse, which the court found on a fact was caused by their predecessor's heaping of earth in 1908. On this finding of fact, the decision was plainly correct.

The fence was a very heavy one, and it seemed that it was a most unsuitable thing to maintain on the top of the sheer drop with no support on the passage side. It was not necessary in the event to decide whether the defendants would have been liable if it had collapsed of its own weight alone. It seems that the fence was a perfectly proper one in the days when the ground sloped continuously, and accordingly it could hardly be said that the defendants would be liable for its collapse, if (as would have been the fact) it had become liable to collapse owing to the acts of the predecessor of X in cutting away the ground from the foot of it and substituting an inadequate retaining wall. It could not be said that the defendants or their predecessors had brought onto their land something liable to cause damage if it escaped. Indeed, they might have been entitled to sue X for failing to support it. There is, of course, a natural right of lateral support of one piece of land by the neighbouring close; there is no natural right of lateral support for buildings or erections on land. But such a right may be acquired by grant or prescription. Accordingly, if the fence had been in existence for over twenty years before the soil was cut away, such a right would have been aquired. But here the servient land had changed hands between the excavation and the

resulting subsidence, and it is doubtful whether the present owner would be liable in damages; this is a point which is not fully settled, but it seems that there is no such liability: see *Greenwell & Others* v. *The Low Beechburn Colliery Co.* [1897] 2 Q.B. 165, and *Hall* v. *Duke of Norfolk* [1900] 2 Ch. 493.

But the original owner who withdrew support, or his estate, would be liable. If the subsidence occurred long after the excavation, time would only run from the subsidence for the purposes of limitation, because it is the subsidence, causing damage, which is the cause of action and not the withdrawal of support: *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Cas. 127. If the person who withdrew support dies between the date on which he did so and the collapse, a curious position arises, since he is committing a sort of posthumous tort, in as much as the cause of action only accrues after his death. Presumably no such action would have been maintainable in former days, because *actio personalis cum persona moritur*. But such an action is saved by the Law Reform (Miscellaneous Provisions) Act, 1934, s. 1. The period of limitation seems to be six months from the grant of representation, under s. 1 (3) (*b*), but the case is rather difficult to fit into the words of subs. (3).

But, in fact, the case under discussion was decided on the ground that the heaping of earth was an unnatural user of land and that accordingly *Rylands* v. *Fletcher* applied. The liability under that decision is an absolute one. It is no defence to say that there was no negligence; and a person is liable for maintaining a state of affairs created by his predecessor. Nor is such a state of affairs one which can become justifiable under the Prescription Act, if it exists for a sufficiently long time. If that had been possible, the case would have been differently decided, since the heap had been in position for upwards of thirty years.

But the rule in *Rylands* v. *Fletcher* only applies if there has been an unnatural user of the land, for example, by heaping it up (as here) or by collecting water upon it. On the other hand, in *Giles* v. *Walker*, 24 Q.B.D. 656, allowing thistles to collect, so that their seeds blew about and caused damage, was not an unnatural user: in *Rickards* v. *Lothian* [1913] A.C., at pp. 274 and following, the Judicial Committee intimated that maintaining a lavatory in a block of offices was not an unnatural user; nor was the existence of rocks dangerous through their natural condition: *Pontardawe* v. *Moore-Gwynn* [1929] 1 Ch. 656, nor a dangerously decayed tree: *Noble* v. *Harrison* [1926] 2 K.B. 332. But, since the liability is an absolute one of the occupier, the advisers of a purchaser will be prudent to consider whether any part of the land purchased is in such a condition that if damage results from that condition, their client will be responsible. In the case under consideration, the collapse would never have occurred if the predecessor in title of X had put up an adequate retaining wall, as the heaping was comparatively slight, but that did not assist the defendants.

Landlord and Tenant Notebook.

Latent Defects.

THE question whether regard, and if so what regard, is to be had to the condition of the premises at the time of the demise, when considering questions of dilapidations, is not an easy one. On the one hand, a line of cases can be cited tending to show that the state of repair obtaining when the demise was made is quite immaterial. On the other hand, a good deal of authority can be adduced to support the proposition that that factor is a necessary ingredient in determining what the parties contemplated and, therefore, what the covenant means.

I do not propose to discuss either series exhaustively; a few examples will suffice. The covenantee is best served by such a passage as the following, culled from the judgment of Fletcher Moulton, L.J., in *Lurcott* v. *Wakely & Wheeler* [1911] 1 K.B. 905, C.A.: "Either it [a particular wall] got into its ruinous state before the demise of the premises, or it got into that state during the term of the demise, and it is settled law that when a man undertakes to keep a thing in good condition or in thorough repair, and it is not in that condition when the demise commences, the covenant implies that he is to put it in that state as well as keep it in that state."

If this be settled law, it is clear that an ordinary covenant to repair may oblige a tenant to deliver up better premises than he received. I will now turn to the authorities which lay it down that the state of affairs at the commencement of the term is a relevant factor.

These include *Gutteridge* v. *Munyard* (1834), 7 C. & P. 129, in which the covenanting tenant was sued at the expiration of a twenty-one-year lease of premises some one hundred years old; apparently they had been dilapidated throughout or practically throughout the term. Tindal, C.J., summing up to the jury, said: "When a very old building is demised it is not meant that it should be restored in an improved state . . . the tenant has the duty of keeping it as nearly as may be in the state in which it was at the time of the demise by the timely expenditure of money and care." In *Soward* v. *Leggatt* (1836), 7 C. & P. 613, a tenant was held not liable for the laying of joists in a manner which would make them more durable Then, again, in *Stanley* v. *Towgood* (1836), 3 Bing. (N.C.) 4, a tenant was sued on an ordinary repairing covenant for dilapidations to a house which had been old when he took it. Evidence tendered on his behalf to show details of the defects at the time of the demise was rejected, but Tindal, C.J., held that it did matter whether the house was new or old at that date. Next year, in *Burdett* v. *Withers* (1837), 7 Ad. & El. 136, counsel for the defendant in a similar case was prevented from cross-examining as to the condition of the premises when the lease had commenced; on a rule being obtained, Denman, C.J., said: "It is very material, with a view both to the event, and to the amount of damages, to show what the previous state of the premises was." Next, *Mantz* v. *Goring* (1838), 4 Bing. (N.C.) 451, clarified the position somewhat; the defendant in this case (another action for dilapidations) was not allowed to cross-examine as to particular defects existing at the time of the demise, but was held entitled to give evidence of the *general state* of the premises at that date. "It is established," said Tindal, C.J., "by *Stanley* v. *Towgood* and other cases that the same nicety of repair is not exacted for an old building as for a new one."

The passage just quoted suggests how reconciliation may be effected between the apparently conflicting principles. To keep in repair includes to put into repair, but the age of the building is to be a factor in determining the *standard* of repair—as far as *principle* is concerned, there is no reason why other factors should not play an equally important part.

Payne v. *Haine* (1647), 16 M. & W. 541, is not inconsistent with this view. At the original trial, Platt, B., told the jury to consider the state of the premises (a farm) when the defendant had entered and find in his favour if they were left as he had found them. This, of course, would go further than the position contended for. On a rule being obtained, Parke, B., made the following observation: "Good repair is different in old and new premises; but here the defendant is to 'keep in good repair'; that would apply to premises in bad condition when demised to him." In his judgment the learned baron said: "If at the time of the demise the premises were old and in bad repair, the lessee would be bound to put them in good repair *as old premises*." Alderson, B., said that the effect of *Stanley* v. *Towgood*, *supra*, was that though age might be considered, any inquiry into the state of repair (at the time of the demise) was misplaced.

So again the emphasis is on a distinction to be drawn by reference to age alone. But the judgments are not, I submit,

inconsistent with the theory that what really matters is the standard of repair appropriate to the premises, a standard which may be affected not only by age but by other circumstances.

The leading case of *Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42, brought this out, the "other circumstance" so freely referred to and illustrated being that of locality. "A house in Spitalfields may be repaired with materials inferior to those requisite for repairing a mansion in Grosvenor Square" said Lord Esher, M.R., and Lopes, L.J., summed up the position by defining "good tenantable repair" as "such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it."

The importance of this. The series of cases decided in the eighteen-thirties, most of them by Tindal, C.J., dealt with old houses and farms, property which was let when its useful life was not only drawing to a close but might be expected to draw to a close. The jerry-builder had not appeared on the scene, and no question had arisen whether a covenantor was bound to put into good repair a house which was badly constructed but not old.

In *Lister* v. *Lane and Nesham* [1893] 2 Q.B. 212, C.A., locality was immaterial, but both age and character were factors. The premises were a wharf and cottage, the latter at least one hundred years old, and when the defendants attempted to repair a wall of the cottage it was found that a "mud cill"—i.e., a timber platform resting on boggy soil—had been used instead of concrete foundation, and had rotted. Consequently, in order to repair, it would have been necessary to rebuild. It was held that "if a tenant takes a house which is of such a kind that *by its own inherent nature* it will in course of time fall into a particular condition, the effects of that result are not within the tenant's covenant to repair."

I think that the character of the structure was the decisive factor in the above case rather than the great age; in other words, that if the structural defect had been such that disrepair resulted within a year or two of a house being built and let, the covenanting tenant would, according to *Lister* v. *Lane and Nesham*, be excused: at all events, if wholesale operations were necessary to remedy the trouble. But we have as yet no direct authority to show whether "keep in repair" implies remedying a latent defect which ought not but yet might be expected to be there. A lessee under such a covenant is bound, as Parke, B., said in *Payne* v. *Haine*, *supra*, to put old premises in good repair as old premises; would he likewise be bound to put jerry-built premises in good repair as such?

Our County Court Letter.

DEFENCE OF INFANCY.

In a recent case at Exeter County Court (*Lear, Brown and Dunsford* v. *Dormand and Another*) the claim was for £149 13s. for goods sold and delivered. The defendants' case was that the goods were supplied to the business of "B. Dormand." This was the name of the second defendant, who was the son of the first defendant, and, at the time of the transactions sued upon, was only seventeen years old. As an infant, he was therefore not liable for the debt. A technical objection was taken, on behalf of the plaintiffs, that although the second defendant's birth certificate had been produced no one but himself had proved it. His Honour Judge Thesiger observed that, in most cases, he would not have upheld the objection. The evidence was, however, that the first defendant, being in financial difficulties, had put forward his son, who was a minor, as the owner of the business. As soon as the son was twenty-one years of age the first defendant assumed the ownership of the business. The first defendant, however, had always been a partner, and the use of the firm name "B. Dormand" was merely an attempt to evade the legal liabilities. Judgment was given for the plaintiffs, with costs.

THE SALE OF AUTOMATIC MACHINES.

In a recent case at Liverpool County Court (*National Automatic Machines, Ltd.* v. *Groves*) the claim was for £68 3s. 8d. as the balance of the price of a cigarette machine. The evidence of the plaintiffs' sales representative was that the defendant had signed an agreement for sale, and had paid a deposit of £2 17s. 6d. The balance was payable by twenty-five monthly instalments of £2 17s. 6d. Before delivery of the machine, the defendant received a copy of the agreement, which made no mention of the machine being on trial. The defendant's case was that he signed the agreement, without reading it, on the understanding that the machine was on three months' trial, and was returnable if not satisfactory. His Honour Judge Procter held that the defendant's signature was obtained by a fraudulent trick, and that he was given no opportunity of reading the agreement. Judgment was given for the defendant, with costs.

THE CONTRACTS OF PANTOMIME ARTISTES.

In *Cowden* v. *Frank Walker Productions*, recently heard at Westminster County Court, the claim was for £99 as damages for breach of contract. The plaintiff was an actress, and her case was that she was given an audition by the executive partner in the defendant firm. Having heard the plaintiff sing, and after comparing her height with that of his wife (who was to be the principal boy in a pantomime), the partner gave the plaintiff a card, upon which he had written: "Rehearse December 12. Open December 26. Frank's, The Nest, Easington, Durham. Wire confirmatory. Write accepting panto-engagement £12." This meant that the plaintiff was engaged as principal girl in a pantomime at the Globe Theatre, Stockton-on-Tees. A verbal term of the agreement was that the engagement was for a twelve weeks' run. Nevertheless the plaintiff learned a few days later that another actress had been engaged for the same part. The plaintiff obtained another engagement, but only for five weeks at £10 a week, less commission, i.e., £45 net. Credit was given for this amount, thereby reducing the damages to the sum claimed. The defence was that the plaintiff was not definitely engaged. His Honour Judge Dumas held that engagement implied a proposal that was accepted. The written terms were silent as to the period, but the plaintiff's evidence (that the duration was to be twelve weeks) was accepted. Judgment was given for the plaintiff for the amount claimed against the two partners in the defendant firm who were named in the summons, with costs. It transpired during the hearing that there was also a third partner, who had not been sued.

THE COST OF FENCING.

In *H. Burlingham & Co.* v. *Homer and Another*, at Evesham County Court, the claim was for £55 16s. as the cost of supplying fencing. The plaintiffs' case was that, having had an inquiry for fencing, they quoted 8s. a yard, viz., 7s. a yard for fencing and 1s. a yard for fixing. The actual length—117 yards—was known from the previous contract, and a verbal estimate was given that the amount would be "approximately" £40. This was only intended to be an estimate, however, and was not a quotation or contract. The defendants' case was that the plaintiffs' representative stated that the cost would be "definitely" not more than £40. Another £9 was due for a gate, and, on receipt of the account for £55 16s., the amount was thought to be a mistake. A cheque for £49, the amount admittedly due, was sent, but had been returned three times. The amount of £40 was the contract figure for the work. His Honour Judge Roope Reeve, K.C., upheld this contention. Judgment was given for the plaintiffs for £49. As this amount had been paid into court, the defendants were awarded costs.

To-day and Yesterday.

3 JULY.—On the 3rd July, 1879, Hannah Dobbs, the servant in a house in Euston Square, was tried before Hawkins, J., at the Old Bailey for the murder of Miss Hacker, an eccentric old lady who had had a room there, but had disappeared in October, 1877. Hannah had said that she had gone away, though her things remained behind. Then in May, 1879, the remains of a human body were discovered in the coal cellar with a rope tied tightly round the neck. It was the missing woman, and Hannah was found to have her watch and other trinkets. The prosecution suggested that the prisoner had committed the murder when no one else was in the house, but the jury only took twenty-five minutes to acquit her. She had been half fainting and uttered a deep sigh of relief.

4 JULY.—On the 4th July, 1777, John Horne Tooke was tried before Lord Mansfield for publishing in the newspapers a resolution of the Constitutional Society charging the King's troops with inhumanly murdering "our beloved American fellow subjects" in the skirmish on the village green at Lexington where the first conflict of the War of Independence took place. Though he defended himself with characteristic vigour and pertinacity, he was convicted and condemned to a year's imprisonment and a fine of £200.

5 JULY.—When is a place not a place? It was on the 5th July, 1897, that the Court of Appeal answered this conundrum by holding that an uncovered enclosure adjacent to a racecourse frequented by bookmakers and their clerks who called the odds for the purpose of attracting backers was not "a place opened kept or used" for the purposes prohibited by the Betting Act, 1853. The House of Lords later decided the same way with only two dissentients.

6 JULY.—On the 6th July, 1835, John Marshall, the great Chief Justice of the United States, died in his eightieth year.

7 JULY.—On the 7th July, 1859, Dr. Smethurst appeared at the Old Bailey charged with the murder of Miss Isabella Bankes. He had bigamously married her in December, 1858, and after making a will in his favour she had fallen ill mysteriously in the following March. On the day of her death in May the doctor was arrested on a charge of poisoning her. Lord Chief Baron Pollock, who presided, declared that the case was one of the most remarkable that he remembered in his long experience.

8 JULY.—On the second day of the trial there was a dramatic turn of events, for a juryman was suddenly taken seriously ill. The proceedings terminated and the trial was postponed to the following month. Smethurst was then found guilty, but the public and the medical press raised such an outcry at the verdict that the Home Secretary took the extraordinary step of submitting the evidence to a well-known surgeon. On his report a pardon was granted, leaving Smethurst free after a conviction for bigamy to prove the lady's will.

9 JULY.—On the 9th July, 1840, Edward Oxford, a young man of eighteen, was tried at the Old Bailey for high treason. One afternoon while Queen Victoria was driving up Constitution Hill with the Prince Consort he had fired two pistols at her, fortunately missing with both, for he was unskilled in the use of firearms, and none of the bystanders suffered any injury. The defence denied that the weapons were loaded with bullets and also set out to show that the prisoner suffered from hereditary insanity. They succeeded on the second point, the jury finding that he was of unsound mind.

THE WEEK'S PERSONALITY.

In 1835, Chief Justice Marshall breathed his last without pain, his mind as clear and strong as ever. One who was present tells how he "met his fate with the fortitude of a philosopher and the resignation of a Christian." The last thing taken from his body was a locket which three and a half years before his beloved wife had hung about his neck just before she died. Her loss had left him a changed man and he had never recovered from it. Old memories must have filled his mind as he lay expiring in Philadelphia, for nearly sixty years earlier, as a lieutenant in the armies raised to assert American independence, he had marched through the city on the road from Valley Forge to Monmouth. It was in 1801 that he was appointed Chief Justice. The defective organisation of the Supreme Court had brought its dignity to a very low ebb, but that extraordinary ability, that courage, that unswerving impartiality, that absolute control of nerves and temper which made him one of the greatest men of his country enabled him to confer on it a high prestige. All America felt that his place could never be supplied as it honoured "the Soldier, the Orator, the Patriot, the Statesman, the Jurist, and, above all, the good and virtuous man."

A MATTER OF LUCK.

In a recent article on what we owe to luck, Dr. Inge quoted Lord Haldane's observation that, "we are apt greatly to underrate the part which accident and good luck have really played in the shaping of our careers and in giving us such successes as we have had." Luck it certainly was that raised the far from outstanding talents of Lord Alverstone to the Chief Justiceship—and he admitted it. The career of Lord Chancellor Erskine, after he had turned his back on the Army and the Navy to embrace the law, was launched by a stroke of luck. In his first notable case (which came to him through a dinner-table encounter with the lay client) he was the junior of five counsel retained. His four seniors spoke at considerable length, and he never dreamed that he would be heard at all. Hargrave, who was fourth, was tedious and tired the court, "but as my good fortune would have it he was afflicted with the strangury, and was obliged to retire once or twice in the course of his argument. This protracted the cause so long that when he had finished Lord Mansfield said that the remaining counsel should be heard the next morning." So Erskine, instead of being confined to a formal word, got judges with fresh minds, and after a night's preparation made a speech that was a sensation. In his account of the incident he added: "I have since flourished, but I have always blessed God for the providential strangury of poor Hargrave."

HORSE GUARDS' RIGHT OF WAY.

A recent note in a newspaper pointed out that passage under the Horse Guards arch is not a royal prerogative, though it is permitted to so few people that it has come to be so regarded by the layman. The select few are rather arbitrarily chosen and this once gave Sir Frank Lockwood an opening for one of his jokes. One morning he rode across the Horse Guards Parade to Parliament Street. On being stopped by the sentry he weightily informed him that he was "one of Her Majesty's Counsel." This so took the man by surprise that he at once apologised and let Lockwood through, saluted by the guard. No embarrassing sequel followed as on the earlier occasion when Lord Brougham had driven through in his coach on the way to a Drawing Room at the Palace. The officer of the guard, having stopped the Lord Chancellor, tried to explain to him the delicate distinction which allowed the Speaker of the Commons to go that way but not the Speaker of the Lords. Brougham duly gave orders for the coach to turn back, but owing to a misunderstanding the coachman whipped up his horses and drove into the Park. Questions were afterwards asked in the House of Lords as to whether the king's guard had been forced by the Lord Chancellor, and Brougham, complaining bitterly of being thus "put on trial on the Woolsack," explained what had happened.

Reviews.

The Complete Law of Landlord and Tenant. Being the Ninth Edition of Redman's Landlord and Tenant. Edited by H. A. Hill, B.A., of Gray's Inn, Barrister-at-Law, assisted by A. W. Nicholls, M.A., B.Litt., of Gray's Inn, Barrister-at-Law, and A. L. Bostock, LL.B., Solicitor of the Supreme Court. 1939. Royal 8vo. pp. ccxxxiv, 926 and (Index) 75. London: Butterworth & Co. (Publishers), Ltd. 52s. 6d. net.

The editors of the new edition of this work have adopted a different mode of arrangement of subject-matter from that hitherto employed. The book is now divided in the first place into three parts: "The Common Law," "Acts Affecting Landlord and Tenant," and "Forms." In the result, a remarkably comprehensive work has been produced which will be of the utmost value to all concerned with this branch of the law. The method of division may, indeed, be criticised, as can any method of division; it is impossible to set out the common law without mentioning statutory modifications, and Pt. II might well have been entitled: "Some Acts Affecting Landlord and Tenant." Thus, while the whole of the law of distress—a part of the common law rendered almost unrecognisable by the spasmodic attentions of the Legislature—is exhaustively expounded in a chapter in Pt. I, the law affecting the tenant-farmer is contained partly in a section of Ch. VIII (Leases of Special Properties) of that part and partly in a section of Pt. II.

The final sub-division of the matter of Pts. I and II is into numbered paragraphs each containing the relevant propositions and followed by notes in which the authorities are cited and, where necessary, cross-references given. This innovation represents an undoubted improvement.

The editors have deliberately refrained from discussing problems, which does not mean, however, that they have omitted to indicate their opinions where there is as yet no authority at all; e.g., it is suggested, on p. 871, that vermin do not constitute a sanitary defect under s. 188 (the interpretation section) of the Housing Act, 1936, though they might render a house unfit for human habitation within the meaning of s. 9, *ibid.* The editors also guardedly express the opinion (on the same page) that the absence of a proper food store would constitute a sanitary defect. The existence of controversy, as opposed to the discussion of problems, might perhaps have been more often referred to; thus, there is no mention of the fact that divergent judicial opinions have been expressed on the question whether an action can be brought for waste though there is an express covenant dealing with the matter, except in so far as the words "and see" [*Jones* v. *Hill*] (p. 164), suggest conflict of authority. Also, in giving (on p. 175) Buckley, L.J.'s *dictum* in *Lurcott* v. *Wakeley and Wheeler* [1911] 1 K.B., at p. 924, to the effect that "repair" means replacement of parts, reference should be made to *Bishop* v. *Consolidated London Properties, Ltd.* (1933), 102 L.J.K.B. 257 (mentioned on p. 173 in a different connection), in which that word was more widely interpreted.

Part III contains a considerable variety of forms and precedents (Conveyancing, High Court and County Court). One would have liked to have seen a tenancy agreement for a flat included among the conveyancing forms in view of the increasing popularity of that type of residence (more than three pages of Pt. I are devoted to discussing the special incidents of such tenancies). The precedent of a licence to assign or underlet accords with tradition in its comprehensiveness; the tradition is one which (in the reviewer's opinion) might well be departed from, but many practitioners will prefer to adhere to it.

Books Received.

Arbitration and Awards. By Ranking, Spicer & Pegler. Seventh Edition. 1939. Edited by W. W. Bigg, F.C.A., F.S.A.A., and C. A. Sales, LL.B., F.S.A.A. Medium 8vo. pp. xxiv and (with Index) 210. London: H. F. L. (Publishers), Ltd. 7s. 6d. net.

The Principles of the Law of Bankruptcy and Deeds of Arrangement. By Harold Potter, Terence Adams and Augustus W. Dickson. Second Edition. 1939. Demy 8vo. pp. liii, 355 and (Index) 35. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

Bankruptcy Liquidation and Receivership. By N. E. Mustoe, M.A., LL.B., with Accounts by W. A. Kieran, A.S.A.A. 1939. Demy 8vo. pp. lix, 490 and (Index) 18. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Annual Survey of English Law, 1938. Royal 8vo. pp. xxxv and (with Index) 434. 1939. Published for The London School of Economics and Political Science. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

Register of Chartered Surveyors, Chartered Land Agents and of Auctioneers and Estate Agents, 1939. Royal 8vo. pp. xxiv and 1283. London: Thomas Skinner & Co. (Publishers), Ltd. 20s., post free.

Obituary.

Sir CHARLES E. ST. JOHN BRANCH.

Sir Charles Ernest St. John Branch, K.C., whose death occurred recently at Horsham, Sussex, at the age of seventy-four, was called to the Bar by Gray's Inn in 1892. He became Colonial Secretary and Attorney-General of the Leeward Islands in 1903. In 1909 he was appointed Attorney-General of Jamaica, and in 1921 became a judge in the Straits Settlements. He was Chief Justice of Jamaica from 1923 to 1925 and of Ceylon from 1925 to 1926.

Mr. F. S. H. BRYANT.

Mr. Francis Stanley Hoskyns Bryant, Barrister-at-Law, died on Thursday, 29th June, at the age of thirty-seven. Mr. Bryant was called to the Bar by the Inner Temple in 1928.

Mr. A. C. D. JACKSON.

Mr. Amiend Cecil Desmond Jackson, Barrister-at-Law, collapsed and died at Willesden County Court on Tuesday, 4th July. Mr. Jackson was called to the Bar by the Middle Temple in 1908, and was a member of the London Sessions Bar mess.

Mr. H. R. BURRILL.

Mr. Harold Ruthven Burrill, LL.B., solicitor, of Messrs. Simpson, Curtis & Burrill, of Leeds, died on Thursday, 29th June. Mr. Burrill was admitted a solicitor in 1920.

Mr. R. DAVIS.

Mr. Richard Davis, retired solicitor, of Hull, died on Saturday, 24th June, at the age of seventy-six. Mr. Davis, who was admitted a solicitor in 1885, and was a former Under-Sheriff of the City of Hull, retired from practice in 1936.

Mr. H. C. DRYLAND.

Mr. Harold Coster Dryland, solicitor, of Messrs. Dryland, Son & Thorowgood, of Reading, died on Friday, 29th June, at the age of sixty-seven. Mr. Dryland was admitted a solicitor in 1896, and was a Freeman of Reading.

Mr. C. E. GODWIN.

Mr. Charles Edward Godwin, solicitor, and senior partner in the firm of Godwin & Co., of Winchester, died on Wednesday, 21st June, at the age of seventy. Mr. Godwin, who was admitted a solicitor in 1892, was also Registrar of the County Court and District Registrar of the High Court. In 1912 he was appointed first Chairman of the Court of Referees, and had since held the appointment for the Southampton, Winchester and Salisbury area.

Notes of Cases.

Judicial Committee of the Privy Council.

Sir Hari Sankar Paul and Another *v.* Representatives of Keda Nath Sahar (deceased) and Others.

Lord Macmillan, Lord Romer and Sir George Rankin.
25th April, 1939.

India—Mortgage by Deposit of Title Deeds—Accompanying Written Memorandum containing all Essentials of Transaction—Whether Registration required—Indian Registration Act (XVI of 1908), s. 17 (1) (*b*).

Appeal from a decision of the High Court, Fort William, Bengal (Costello and Panckridge, JJ.), reversing a decision of that court in its original civil jurisdiction (Lort-Williams, J.).

The plaintiffs agreed to lend the defendants Rs.25,000, for which certain property in Calcutta was to be the security. The terms of the loan having been agreed on, the plaintiffs and the defendants met, and the defendants signed a document setting out the agreed terms. The advance was to be made in two instalments, and the document provided that the advance of the first sum would be made on the deposit of title deeds relating to a certain specified property, and that, after payment of the balance to be advanced, the defendants would execute a memorandum evidencing the deposit of deeds and embodying the conditions of the loan. The defendants, after signing that document, handed over the deeds, saying at the same time that they were depositing the deeds as security or mortgage for the first sum advanced. A few days later the balance was paid, the above-described formalities being repeated, and on the same day one of the defendants on behalf of the others executed a formal and elaborate document which, after reciting, *inter alia*, that the documents of title specified in a schedule had been deposited as security for the advances agreed on, declared that the deeds had been delivered with intent to create a security on the property in question, "such security having been created prior to the execution of the agreement by the delivery of the documents . . . ," and that the plaintiffs would hold the deeds as security for the payment of the sums due with any costs incurred by the plaintiffs in obtaining payment of the sums "hereby secured." The document, which also laid down other terms and conferred a power of sale on the mortgagees, was not registered. By s. 17 (1) (*b*) of the Indian Registration Act, 1908, registration is required of "non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish . . . any right, title or interest . . . of the value of Rs.100 and upwards, to or in immoveable property." The defendants contended that the memorandum constituted the bargain between the parties and required registration under s. 17 (1) (*b*), and that for want of such registration it was unenforceable under s. 49. The plaintiffs contended that the memorandum did not effect or constitute any transaction, being merely a record of a transaction already completed, and did not require registration. Lort-Williams, J., upheld that contention and held the mortgage enforceable, but the High Court reversed his decision. The plaintiffs now appealed to His Majesty.

Lord Macmillan, delivering the judgment of the Board, said that the decision in each case of this kind had turned on the character of the document in question. With *Obla Sunda-Rachariar* v. *Narayanna Ryyar* (1931), L.R. 58, I.A. 68, might be contrasted *Subramonian* v. *Lutchman* (1922), L.R. 50, I.A. 77, where Lord Carson, after citing *Kedarnath Dutt* v. *Shamloll Khettry* (1873), 11 Ben. L.R. (O.C.J.) 405, and *Pranjiuandas Mehta* v. *Chan Ma Phee* (1916), L.R. 43, I.A. 122, thus laid down the criterion at p. 83: "Did the document . . . constitute the bargain between the parties or was it merely the record of an already completed transaction?" The leading feature of the present case was that the appellants, advisers deliberately endeavoured to effect a valid mortgage by delivery of title deeds, and at the same time to accompany it with an effective written document which would nevertheless not require registration. The appellants had overreached themselves, and had failed to achieve their purpose. The memorandum contained all the essentials of the transaction. Where, as here, parties professing to create a mortgage by deposit of title deeds contemporaneously entered into an agreement in writing which was made an integral part of the transaction, and was itself an operative instrument, such a document must be registered. The appeal must be dismissed.

Counsel: *A. M. Dunne*, K.C., and *J. M. Pringle*; *Lionel Cohen*, K.C., and *J. M. Parikh*.

Solicitors: *W. W. Box & Co.*; *Stanley Johnson & Allen*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

T. D. Bailey, Son & Co. *v.* Ross T. Smyth & Co.

Scott, Clauson and Goddard, L.JJ. 18th May, 1939.

Contract—Sale of Corn—Contract Quantity—Option for Limited Increase or Reduction—Appropriation of more than Contract Quantity—Provisional Invoice—Amended Invoice for Contract Quantity—Buyer's Right to Reject—Sale of Goods Act, 1893 (56 & 67 Vict., c. 71), s. 30 (1).

Appeal from Branson, J.

A contract, dated the 3rd August, 1938, on the printed form No. 28 of the London Corn Trade Association, was for 15,000 units (quarters of 480 lb.) of American corn, to be shipped as per bills of lading. The sellers had an option of dividing the quantity between one or more vessels. A clause in the printed form provided that the quantity might be increased to 2 per cent. more or reduced to 2 per cent. less than the quantity named, and that the sellers might have an additional option of shipping a further 3 per cent. more or less on contract quantity over the 2 per cent., subject to certain price adjustment. At the foot of the printed contract was a typed addition: "Separate documents for each 1,000 units and each 1,000 units to be considered as a separate contract." The contract was on c.i.f. terms to Hull. The arbitration clause treated the contract as one for the whole quantity in spite of the typed addition. The conditions on the back, incorporated into the contract, contemplated a string of sellers subsequent to the first sale. Condition 1 provided for notice of appropriation to be sent by the shipper to his buyer or to the seller's house or agent in Europe, and to be passed on by his buyer and by each subsequent seller to his buyer. It provided: "A valid notice of appropriation when once given shall not be withdrawn." By condition 3: "Bill of lading to be considered proof of date of shipment in the absence of evidence to the contrary. Each shipment appropriated in whole or part fulfilment of this contract to be considered a separate contract. . . In the event of more than one shipment being made each shipment to be considered a separate contract but the margin on the mean quantity not to be affected thereby." On the 27th August, 1938, Ross T. Smyth & Co. wrote to the buyers: "Contract dated August 3, 1938, account ourselves, 15,000 quarters No. 2 yellow American corn August 16/31, 1938—Hull. According to the cable advice received from sellers about 15,444 quarters corn have been shipped per Generton bill of lading dated [blank] which we appropriate in fulfilment of the above contract." This was an appropriation within condition 1 of the contract and the Sale of Goods Act, 1893, s. 17 (1), and s. 18 (r. 5). The contract became one for the quantity named, the sellers having exercised their option. On 6th September Ross T. Smyth and Co. sent the buyers a provisional invoice of "a parcel of No. 2 yellow corn shipped per s.s. Generton from Albany to Hull sold to Messrs. T. D. Bailey, Son & Co., Hull." The bushel equivalent of the contract quantity, 15,444 quarters, was stated. It was also stated that there were fifteen bills of

lading for 1,000 quarters each and one for 444 quarters. On the 7th September the buyers, contending on certain grounds that the documents tendered were not in accordance with the contract, said that the contract must be considered as repudiated in its entirety. Ross T. Smyth & Co. then, on the same day, purported to withdraw the provisional invoice substituting another which described the contract quantity as 15,000 quarters. In the course of an arbitration the findings were as follows: "(1) The notice of appropriation of August 27 was an exercise by the seller, of their option to ship 2 per cent. more or less and a further 3 per cent. more or less on the contract quantity, making the contract one for about 15,444 units; (2) The word 'about' in the notice of appropriation does not reserve to the sellers a right to re-exercise their option but allows only a variation of fractions of quarters; (3) The provisional invoice of September 6 tendering 15 bills of lading each for 1,000 units and one for 444 quarters 214 lb. was a valid tender in accordance with the custom and practice of the trade and the terms of the contract; (4) The sending of the provisional invoice dated September 7 amounted to a withdrawal of the provisional invoice of September 6 and a waiver of the buyers' breach of contract; (5) The tender by the provisional invoice of September 7 was invalid because it was not a tender of the contract quantity as declared by the notice of appropriation and the provision in the contract that each 1,000 units were to be considered a separate contract does not affect the obligation of the sellers to tender such contract quantity." Branson, J., reversed the finding in favour of the buyers.

SCOTT, L.J., allowing the buyers' appeal, said that as the special case by finding No. 4 treated the first provisional invoice as having gone out of the case for all purposes, it was not necessary to discuss the application of the typed clause to it. This judgment would accordingly be limited to finding No. 5. Under the appropriation clause of the contract the goods having in fact been shipped and the weight of 15,444 quarters having been ascertained, that quantity had been appropriated to the contract before the notice of appropriation was written. The notice merely recorded the fact that the act of appropriation had taken place. By shipping the quantity named in the notice they had exercised their option. As a result of the appropriation the property in the whole 15,444 units passed to the buyers and nothing the sellers could thereafter do could undo the appropriation. So when the buyers sent the second provisional invoice saying that they were going to tender fifteen bills of lading for 1,000 units each, they were showing that they were going to disregard the rule in s. 30 (1) of the Sale of Goods Act. The judge had held that the typed clause gave the sellers the right to tender 15,000 units as a separate tender, the validity of which was unaffected by the failure to tender the balance of 444 units. This court disagreed. The object of the first half of the typed clause was to impose on the sellers a limitation of their full printed option under which they could make sub-divided shipments as large or as small as they chose, and to compel them in practice to make their sub-divided parcels all of 1,000 units. The main reason for the second part of the clause was to limit argument whether one bad delivery justified the inference of an intention by the seller to repudiate the whole contract.

COUNSEL: *Willink*, K.C., and *McNair*; *Miller*, K.C., and *Cyril Miller*.

SOLICITORS: *Thomas Cooper & Co.*; *Middleton, Lewis and Clarke*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Mayer and Sherratt *v.* **Co-operative Insurance Society, Ltd.**

MacKinnon and du Parcq, L.JJ. and Atkinson, J.
24th May, 1939.

WORKMEN'S COMPENSATION — INSURANCE — EMPLOYERS INSURED AGAINST LIABILITY—INDUSTRIAL DISEASE RESULTING IN DEATH — COMPENSATION PAID TO DEPENDANTS—DISEASE CONTRACTED DURING CURRENCY OF POLICY—DEATH AFTER EXPIRATION—LIABILITY OF INSURERS—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), ss. 1 (1), 43.

Appeal from Macnaghten, J. (83 SOL. J. 176).

By an insurance policy made in 1926 and expiring in July, 1936, the insurance company agreed to indemnify the claimants against sums which they should become liable to pay under the Workmen's Compensation Acts, 1925, in respect of personal injury by accident or disease sustained by persons employed by them in their business as china manufacturers during the currency of the policy. In 1929 one Sutton, entered the claimants' employment. From May, 1932, to April, 1936, he was occasionally employed by them as a lead worker in connection with china manufacture. He was not employed in connection with lead before or after that period. Before 1929 he had suffered from slight lead poisoning. During that period he gradually contracted further lead poisoning with consequent aggravation of his condition resulting in his ceasing work in November, 1936, and dying in March, 1937. The arbitrator found as a fact that his incapacity and death were due to lead poisoning and the county court held the claimants liable to pay his dependants £265. Macnaghten, J., held that the insurance company was liable to indemnify the claimants.

MACKINNON, L.J., dismissing the insurer's appeal, said that modification (*a*) in s. 43 (1) of the Act did not so apply to the death of a workman caused by a disease mentioned in the Third Schedule to the Act that the death should be treated as the happening of the accident. It had been argued that the liability in respect of industrial disease arose under the provision that the workman should be entitled to compensation as if the disease were a personal injury by accident arising out of and in the course of the employment (s. 43 (1)), and that, therefore, you must go back to s. 1 (1) to see what was the liability for that compensation. But it was wrong to argue thence that on the construction of the policy the accident, to give rise to liability, must have disabled the man from working for at least three days during the currency of the policy. If that argument were sound then in the case of a man suffering a serious accident two days before the expiration of the policy and lingering for four or five days before he died, the company would be able to deny that it was liable. That was erroneous. The personal injury was sustained between May, 1932, and April, 1936, and that was during the period of the policy.

DU PARCQ, L.J., and ATKINSON, J., agreed.

COUNSEL: *Wallington*, K.C., and *Abraham Flint*; *Beyfus*, K.C., and *R. Norris*.

SOLICITORS: *W. S. Eastburn*, for *Freeland & Passey*, of Birmingham; *Berrymans*, for *T. Haynes Duffell & Son*, of Birmingham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Alexander *v.* **J. Dickinson & Sons, Ltd.**

Clauson and Luxmoore, L.JJ., and Macnaghten, J.
18th May, 1939.

WORKMEN'S COMPENSATION—NIGHT WATCHMAN—DEATH IN HUT—GAS TAPS TURNED ON—CLAIM BY WIDOW.

Appeal from Sunderland County Court.

A night watchman employed by the company at their engine works was on duty on the night of the 26th June, 1938. About 5 o'clock on the following morning he was found dead in the cabin provided for him, the door being locked and the windows closed but not locked. Death was due to asphyxiation, two gas taps in the cabin being open. He was about sixty-two years old and cheerful in disposition. On the night in question he seemed just as usual, and no reason was suggested why he should wish to kill himself. The county court judge

dismissed a claim by his widow under the Workmen's Compensation Acts, holding that the cause of death was a matter of conjecture. The widow appealed.

CLAUSON, L.J., delivering the judgment of himself and Luxmoore, L.J., said that the case should be referred back to the judge for reconsideration. The evidence sufficiently established that in the course of his employment the man was properly in the cabin, to which a risk attached by reason of the presence of the gas which by accidental or negligent manipulation of the taps might escape. This asphyxiation was an accident capable of explanation solely by reference to that risk within *Simpson* v. *L.M.S.* [1931] A.C., at p. 369. It would have been legitimate for the judge, despite the absence of evidence as to the immediate circumstances of the death, to attribute the accident to that risk if there was not sufficient evidence of suicide and so to hold that the accident arose out of the employment. He had approached the case on the footing that if he excluded suicide he should treat the cause of death as a matter of conjecture, holding that the widow had not discharged the onus on her. The court was not satisfied that he had definitely rejected the evidence of suicide. He seemed to have thought erroneously that he could keep an open mind on that subject. The matter should be referred back to the judge with a view to his reconsidering the proper inferences to be drawn from the evidence.

MACNAGHTEN, J., dissented.

COUNSEL: *J. Pugh; J. Charlesworth.*

SOLICITORS: *Isadore Goldman & Son*, for *R. R. Crute & Son*, of Sunderland; *Taylor, Willcocks & Co.*, for *G. N. Cook*, of Sunderland.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Carew; Channer *v.* Francklyn.

Simonds, J. 7th June, 1939.

ADMINISTRATION—ANNUITIES—SETTLEMENT OF CAPITAL TO PRODUCE AMOUNT—DEFICIENCY—ABATEMENT.

The testatrix, who died in 1934, by her will left her residuary estate on trust for sale and to pay the net income to her sister during her life. After the tenant for life's death the residue was to be held on trust to pay certain legacies and then to pay two annuities of £500 each. On the death of each annuitant the capital representing her annuity was to be held in trust for such persons as the annuitant should appoint, and in default of appointment upon other trusts for the children of one Carew, one of the legatees. The tenant for life having died in 1938 the estate was not sufficient to pay the legacies and provide the capital to produce the annuities for the annuitants, who were both living.

SIMONDS, J., said that the question was as to the effect of the disposition in favour of the annuitants with a gift over of the capital mentioned in each case. Without having directed a sum of capital to be set aside to provide for the two annuities the testatrix proceeded on the assumption that that had been done. That should be construed as a settled legacy of such sum as when invested in Consols at 2½ per cent. would produce the yearly sum of £500. The annuitant should be regarded as the life tenant and the persons entitled in reversion as the reversioners. The estate being inadequate those settled legacies were liable to abatement like ordinary legacies. The annuitants would receive whatever income was produced by the abated legacy. *In re Nicholson*, 82 SOL. J. 624, and *In re Farmer*, 82 SOL. J. 1050, could be distinguished. Here no priority was given to the annuitants.

COUNSEL: *G. Upjohn; Herbert Hart; L. W. Byrne; A. Berkeley.*

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Moger & Couch*, of Wiveliscombe, Somerset.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Gunther's Will Trusts; Alexander *v.* Gunther.

Farwell, J. 3rd, 4th and 25th May and 14th June, 1939.

WILL—DISPOSAL OF RESIDUE—HOTCHPOT PROVISION—VALUATION OF ESTATE—TIME.

A testator who died in 1931 bequeathed his residuary estate to trustees on trust for sale and conversion with power to postpone sale. By cl. 7 he directed them to divide the moneys to arise from the sale and conversion into two equal moieties. By cl. 8 the first moiety was to be held in trust for his children by his first wife in equal shares. By cl. 9 the income of the second moiety was to be paid to his second wife for life, and subject to this it was to be held in trust for his children by her in equal shares. By cl. 10 the testator directed that in the division of his residuary trust fund there should be brought into hotchpot as between the two moieties and charged against them respectively certain stated sums, and that in the division of the first moiety as between the children of the first marriage there should be brought into hotchpot and charged against the respective shares in such moiety certain other stated sums. The administration was complicated, the estate being large and consisting of investments of various kinds in different countries. There had not yet been a final distribution of capital. The question arose at what date the estate should be valued for the purpose of adjusting the rights of the parties *inter se* in the final distribution.

FARWELL, J., said that nothing in the will indicated that the testator had a particular date in mind and the matter must be considered at large. Three dates had been suggested: (1) the testator's death, (2) the date of retainer for legacy duty purposes, and (3) the date of distribution. It was said on behalf of those who wanted the last date that there could be no residue properly speaking till liabilities of all kinds had been discharged. But it was a question of fixing the date at which the estate was to be valued for the purposes, not of ascertaining what the residue was, but of adjusting the rights of the parties where there were hotchpot provisions in the ultimate distribution. The date of retainer was suggested because it was said that after that date the residue had been ascertained and the various persons would then, in equity at any rate, be entitled to whatever their shares might be. But if one took a date other than that of the death the only logical one was the date of actual distribution. There had been long intervals between the date of the death, the date of retainer and the date of actual distribution. The investments included in the estate had much altered in value. The fact that the interests of the parties might vary according to the date taken was some indication that it should be a fixed date not dependent on the energies of the executors. Having regard to all the circumstances, the right date was the testator's death.

COUNSEL: *Gover*, K.C., and *R. Hodge; Cohen*, K.C., and *Mendel; Evershed*, K.C., and *J. Holmes.*

SOLICITORS: *G. & A. Cosens; Holmes, Son & Pott.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Brooks Settlement Trusts; Lloyds Bank, Ltd. *v.* Tillard.

Farwell, J. 27th June, 1939.

POWERS—SETTLEMENT—POWER OF APPOINTMENT TO CHILDREN—TRUST FOR CHILDREN IN DEFAULT OF APPOINTMENT—VOLUNTARY SETTLEMENT BY CHILD—ASSIGNMENT OF INTEREST TO TRUSTEES—SUBSEQUENT EXERCISE OF POWER IN HIS FAVOUR—EFFECT.

By a marriage settlement in 1904, the trustees were directed to pay the wife the interest of the settled fund for life. Subject to this trust they were to hold the settled fund in trust for such of her issue as she might by deed or will appoint. In default of appointment, they were to hold the fund in trust for all her children who should attain twenty-one years.

In 1929 her son Arthur executed a voluntary settlement assigning to trustees "all the part or share, parts or shares and other interest whether vested or contingent to which the settlor is now or may hereafter become entitled, whether in default of appointment or under any appointment hereafter to be made or on failure of any such appointment of and in the trust property," subject to the marriage settlement. In 1939 his mother executed an appointment in pursuance of her power appointing him £3,000, and releasing her life interest. The question arose whether this sum should be paid to him or held on the trusts of the voluntary settlement.

FARWELL, J., said that at first sight it seemed clear that the sum should be retained as part of the funds of the voluntary settlement, the language of which appeared to embrace all the interests which the son might take under the marriage settlement. His lordship referred to "Farwell on Powers" (3rd ed.), p. 310, read a passage identical with one in an earlier edition approved in *Duke of Northumberland* v. *Inland Revenue Commissioners* [1911] 2 K.B., at p. 354, and said that in 1929 the son had only an expectancy, the hope that his mother might exercise the power in his favour, but till she did so he had nothing other than his interest in default of appointment of which he could say that he was contingently entitled to it. The voluntary settlement was purporting to assign to trustees something to which he might in certain circumstances become entitled in the future, but to which he was not then entitled—a mere expectancy. On the authorities, he could not be compelled to hand over this sum and was entitled to call on the trustees to pay it to him: *In re Ellenborough* [1903] 1 Ch. 697; *Lovett* v. *Lovett* [1898] 1 Ch. 82.

COUNSEL: *Herbert Hart*; *N. Armitage*; *Eardley-Wilmot*.

SOLICITORS: *Bird & Bird*; *Dawson & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Eaves; Eaves *v.* Eaves.

Farwell, J. 29th June, 1939.

WILL—CONSTRUCTION—WIFE TO ENJOY PROPERTY DURING WIDOWHOOD—CEREMONY OF MARRIAGE—SUBSEQUENT NULLITY DECREE ON GROUND OF INCAPACITY—EFFECT.

By his will a testator, who died in 1919, gave his wife the use during her life or widowhood of a leasehold house for the unexpired residue of the term. She and a son of the testator by a previous marriage were the executors and trustees of the will. The lease having been sold, the proceeds were invested in their joint names as trustees, it being agreed that she should have the income during her life or widowhood. In 1925 she went through a ceremony of marriage and, on the footing that her interest in the war stock, in which the proceeds of sale had been invested, then ceased, she agreed to its sale and allowed the testator's son, who, under the will was entitled to the residue of his property absolutely, to receive the proceeds, and to use them for his own purposes. In 1937 the lady obtained a nullity decree on the ground of incapacity. She now contended that her widowhood had continued since 1919 and that, accordingly, her life interest continued. She claimed to be entitled to the income as from 1925.

FARWELL, J., said that in the case of a ceremony of marriage which was ultimately declared null and void, on the ground of incapacity, the position of the parties was that, as from the time of solemnisation, they were to all intents and purposes man and wife, having the status of married people. No one could challenge the validity of the marriage save they themselves in properly constituted proceedings in the Divorce Court. But when the marriage was declared null and void the case was not the same as that of a marriage dissolved by the Divorce Court, because in the latter case there had been a true marriage. Again, the position of the parties differed from the case of a bigamous marriage where there never had been a true marriage at all, and anyone could take steps to impeach it. In this case the so-called marriage was treated by the Divorce Court as null and void *ab initio*, and though these two people had lived many years together, having the status of married people, the widowhood never determined because the lady never became in law the wife of her supposed husband. She claimed that there was a mistake of fact, that it was a case of money had and received and that no statute of limitations applied because she had no right of action till her decree was made absolute. But, in the circumstances, she could not succeed. The son had had no means of ascertaining the true position and had been bound to treat the matter on the footing that she and her so-called husband were married and that her widowhood had ceased. It would be inequitable to hold that he was bound to recoup the money. Had there been a trust fund in his hands which was still available, it might be that the lady could have claimed that from the decree absolute she was entitled to the interest. If she had not herself been a trustee the position might have been different, but, having herself as trustee consented to this fund being dealt with as it was, it was not open to her to require the son to replace it after he had been in possession of it for so many years when she might, by taking the necessary proceedings in the Divorce Court, have established some claim to recover it.

COUNSEL: *Harman*, K.C., and *G. Upjohn*; *F. Fuller*.

SOLICITORS: *Gisborne & Co.*; *Ward, Bowie & Co.*, for *Lane, Clutterbuck & Co.*, of Birmingham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

A/S Tank of Oslo *v.* Agence Maritime L. Strauss of Paris.

Atkinson, J. 18th April, 1939.

SHIPPING—CHARTERPARTY—CHARTERERS GIVEN OPTION OF CHOOSING TWO PORTS OF DISCHARGE—BILL OF LADING MISTAKENLY MADE OUT FOR ONE PORT—EFFECT.

Special case stated by an umpire.

The charterers chartered from the owners a vessel which, the charterparty provided, was to load at Philadelphia from the charterers' factors a cargo of petroleum for Europe. The vessel being so loaded, was, according to cl. 1, to proceed "as ordered on signing of bills of lading direct to one safe port . . ." By cl. 26 the charterers had the option of discharging at two ports. Some days before the vessel arrived at Philadelphia to load, the charterers agreed with the owners that discharge should take place at Bordeaux and Le Havre. Neither the charterers' factors nor the master of the ship knew of that agreement, and the shippers accordingly presented, and the master signed, a bill of lading in which only Le Havre was named for discharge. On the charterers wishing to have the cargo discharged at Bordeaux and Le Havre, the owners contended that, as Le Havre alone was specified in the bill of lading, they were not bound to go to Bordeaux, and that, if they went there, they could claim a sum in excess of that provided by the charterparty. The questions for the court were whether, on the true construction of the charterparty, orders for the ports of discharge must be given at the time of signing the bills of lading; and whether, when a bill of lading showing a different port of discharge from the ports agreed was presented, the charterers had agreed to waive the irregularity.

ATKINSON, J., said that the umpire had thought that, as a matter of construction, the words "as ordered on signing bills of lading" must be taken to mean precisely what they said; that those words governed the option clause; and that that clause could therefore only be exercised at the actual time and place of signing the bills of lading. The charterers contended that the option clause was independent of cl. 1, and that they were entitled to exercise their option when they pleased. He (his lordship) did not agree that the words in question must be read literally as meaning at the moment of signing. The charterparty was a commercial

document and must receive a reasonable commercial construction. A shipowner naturally wished to know as soon as possible where his ship was to be sent. He might have further charters in view, and it was important to him to know where the ship would be redelivered to him. A reasonable construction of the words would be "not later than the date of the signing." The burden was on the shipowners to show that the option clause (26) was governed by cl. 1; and they had not discharged that burden. The option could be exercised in any reasonable way. Here, however, when the charterers purported to exercise the option, the shipowner assented to their doing so, and a contractual obligation then arose that the ship should discharge at the two ports. The owners discovered before the ship left Philadelphia that a mistake had been made in the bill of lading. It had deceived no one, and the owners could not be allowed to take advantage of what they must have known to be a slip.

COUNSEL: *H. M. Pratt* (shipowners); *Cyril Miller.*

SOLICITORS: *Sinclair, Roche & Temperley; Thos. Cooper and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Thanet and District Assessment Committee and Others; *ex parte* Isle of Thanet Gas Light & Coke Co.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
18th April, 1939.

RATING AND VALUATION—PROPOSAL TO AMEND VALUATION LIST—GROUNDS—NECESSITY FOR SPECIFYING CLEARLY—RATING AND VALUATION ACT, 1925 (15 & 16 Geo. 5, c. 90), s. 37 (1), (2) (*b*).

Rule *nisi* for prohibition.

The applicant company carried on an undertaking for the supply of gas. That undertaking was re-valued for the purpose of a new valuation list made to come into force on the 1st April, 1934. No alteration had since then been made in the valuation list other than a certain transfer of entries to the valuation list of a certain borough made necessary by the incorporation in that borough of the two urban districts in which the company operated. In March, 1938, a proposal was made by the county valuation committee for an amendment of the borough valuation list in respect of the company's hereditaments "on the ground that the present assessments are unfair and incorrect." The proposal contained a description of the applicants' property, and its assessed value, followed by the words: "Amendment proposed. To such an amount as may be determined on an approved apportionment of the *cumulo* value of the undertaking having regard to the accounts relating thereto in respect of the year ended 31st December, 1931." By s. 37 of the Rating and Valuation Act, 1925: "(1) Any person . . . aggrieved by the incorrectness or unfairness of any matter in the valuation list . . . may make . . . a proposal for the amendment of the list; (2) Every proposal made under this section must . . . (*b*) specify the grounds on which the proposed amendment is supported." The company applied for this rule calling on the county valuation committee and the district assessment committee to show cause why writs of prohibition should not issue to prohibit those bodies from proceeding with the proposal on the ground that it was bad in law and that the assessment committee had no jurisdiction to determine it.

LORD HEWART, C.J., referred to the statements in an affidavit of the county valuation officer relating to the increase since 1933 in the company's trade, and said that, in view of that fact, the officer believed it his duty to make a proposal for the amendment of the valuation list. So far as the proposal stated that the existing assessments were unfair and incorrect, it faithfully observed the words of s. 37 (2); but it was argued with some force for the company that s. 37 (2) presupposed first an amendment clearly proposed and, secondly, that the grounds supporting it were clearly set out. The grounds apparently purporting to specify the particular reasons for amendment of the valuation list were expressed in the words "amendment . . . *cumulo* value." It was difficult to read into those words anything which could fairly be called a specification of grounds supporting the proposal for amendment. The general nature of the amendment was indeed indicated thus: ". . . the assessments are unfair and incorrect." There was, however, no particularity as to the ingredients in which the unfairness or incorrectness were said to be founded. There was only a somewhat vague and incomplete indication of the goal to which the proposed amendment was to be directed. Counsel for the company did not challenge that the valuation committee could in a proper case seek either reduction or increase of assessment by any proposal which it put forward; but it was complained here that no one knew whether increase or reduction was intended. His lordship referred to *R.* v. *West Norfolk Assessment Committee*, 94 J.P. 201, at pp. 202, 203, and said that the matter here was left altogether too vague. The rule should be made absolute.

HUMPHREYS and SINGLETON, JJ., agreed.

COUNSEL: *Trustram Eve*, K.C., and *A. Capewell*, for the Valuation Committee; *Michael Rowe*, for the company. There was no appearance by or for the Assessment Committee.

SOLICITORS: *Sharpe, Pritchard & Co.; Hargreaves and Crowthers.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Cusden and Others *v.* Eden (Inspector of Taxes).

Lawrence, J. 21st April, 1939.

REVENUE—INCOME TAX—WILL—DIRECTIONS TO ACCUMULATE INCOME FOR BENEFICIARIES DURING MINORITY—PROVISIONS OF WILL NOT EXACTLY CARRIED OUT—NO GENUINE ACCUMULATION—EFFECT ON CLAIM FOR RELIEF—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 25.

Appeal by case stated from a decision of General Commissioners for the purposes of income tax.

The appellants were the children of the testator Jonathan Cusden who died in 1918, having provided by his will that his widow should have an annuity of £520 and that the residue of his income should be accumulated for the benefit of the appellants on their attaining the age of twenty-one years, which they had all done by 1935. The widow was one of the trustees of the will. From 1918 the trustees paid over to the widow the entire residual income of the deceased. No accounts for the period 1918–28 were produced. In 1928 accounts were opened, and from then until 1936 the income accumulation account was debited or credited with the surplus of income over the £520. It was not debited or credited with any interest. The opening entries in the new account showing the alleged income accumulations for 1918–28 were more or less imaginary. In 1934 the accountant inserted a new and corrected figure for the opening entries respecting the accumulations before 1928, having decided, for reasons not disclosed on the appeal, that the earlier figures were not correct. By s. 25 of the Income Tax Act, 1918, "Where in pursuance of the provisions of any will . . . any income . . . is accumulated for any person contingently on his attaining some specified age or marrying" the person entitled to the accumulated income can claim relief against the tax which he has paid in the years preceding the contingency in which he became entitled to the accumulations. The appellants, having made application for relief under that section, the respondent objected that there was in the circumstances no accumulation in the hands of the trustees and that the trustees had not accumulated the income in pursuance of the provisions of the will. The widow, having meanwhile executed an acknowledgment that the moneys over and above the £520 a year paid to her had been received by her as a loan, the General Commissioners yet dismissed appeals

to them, as they also were not satisfied that accumulation had been made in accordance with s. 25.

LAWRENCE, J., said that counsel for the appellants submitted that the provision of s. 25 had been fulfilled; that it was sufficient if there were in fact an accumulation of the income of a fund and that there was such an accumulation, at any rate since 1928, by virtue of the accounts kept from that date and of the widow's acknowledgment of indebtedness. The Solicitor-General had stated that in practice the revenue authorities, as a matter of administration, would not insist on the exact carrying out of the provisions of a will and might in their discretion, if satisfied that there had been a genuine accumulation, grant relief under s. 25, although the provisions of the will had not been exactly carried out. He (his lordship) was of opinion that there had been no genuine accumulation in the present case. The appellants' argument amounted to saying that there had been an accumulation of income although that income had been entirely spent by the person alleged to have accumulated it. The money had been entirely spent until 1928, and thereafter accumulated without interest. There appeared to be no prospect of repayment to the beneficiaries. The General Commissioners' conclusion was accordingly right, and the appeals must be dismissed.

COUNSEL: *Heyworth Talbot; The Solicitor-General* (Sir Terence O'Connor, K.C.), and *R. P. Hills.*

SOLICITORS: *Corsellis & Berney; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Newstead *v.* London Express Newspaper, Ltd.

Hawke, J. 21st April, 1939.

LIBEL—WORDS COMPLAINED OF REFERRING TO ACTUAL PERSON OTHER THAN PLAINTIFF—WORDS TRUE OF THAT PERSON—WHETHER PLAINTIFF ENTITLED TO RECOVER IF WORDS CAPABLE OF BEING UNDERSTOOD BY REASONABLE PERSONS TO REFER TO HIM.

Further consideration of an action for libel tried by Hawke, J., with a common jury.

The plaintiff, Harold Cecil Newstead, was well known as a hairdresser in Camberwell, aged about thirty years and unmarried. The defendants in March, 1938, published in the *Daily Express* a report to the effect that "Harold Newstead, 30-year-old Camberwell man" had been sent to prison for bigamy. The plaintiff alleged that the words were understood by many to refer to him. The defendants, in their defence, pleaded, *inter alia*, that the words were published of an existing person of the name and description contained in the words, and were intended and understood to refer to that person, who was not the plaintiff, and that in relation to that person the words were true; and they pleaded justification and fair comment. The plaintiff contended that, if the words referred to some other existing person and were true of that person (which he did not admit), it was the duty of the defendants to take reasonable care to give a precise and detailed description of that person, denoting him exclusively, and to ensure that the words should not be capable of referring to any other person; that the requisite precise description of the other person would have been: "Harold Newstead, a barman, of Crofton Road, Camberwell"; that that description was available to the defendants as every other newspaper which reported the case had given it; and that the defendants recklessly struck out the words giving the occupation and address of the person, and published the words in a form capable of being understood to refer to the plaintiff. The defendants published a correction on the 1st April, 1938. The jury, having disagreed on the first question left to them, namely, whether reasonable persons would understand the words complained of to refer to the plaintiff, HAWKE, J., said that he must discharge the jury. Counsel for the defendants, having contended that they were entitled to judgment, that matter now came up for further consideration.

HAWKE, J., said that he disagreed that he was not entitled to look at the jury's answers or give them any effect. Where there were answers which might be conclusive whatever the answer to the first question might be, then he was entitled to look at them. Also as he was satisfied that the answers were the true answers of all the jury and represented the independent view of the jury on each of the questions put to them, they must be accepted although not read out in court. The question to be decided was whether the principles expressed in *Hulton* v. *Jones*, 54 SOL. J. 116; [1910] A.C. 20, applied to a case where the writer of the alleged libel had in his mind a person other than the plaintiff and where what he wrote was true of that other person. The judgment of Farwell, L.J., in *Hulton* v. *Jones*, supported counsel's contention for the defendants that they did not. In his opinion, however, the effect of the decisions like *Hulton* v. *Jones*, *supra*, was that it did not matter what the writer of an alleged libel meant or intended to mean, but that the meaning was to be discovered from the expressions to which he gave utterance. He would, therefore, enter no judgment. The parties must make up their minds as to the future course of the litigation. He did not think that he had power to direct a new trial on one question only.

COUNSEL: *A. T. Denning*, K.C., and *R. M. Wilson; G. O. Slade.*

SOLICITORS: *Manches & Co.; Shirley Woolmer & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

London County Council *v.* Ipswich Corporation.

Lord Hewart, C.J., Humphreys and Singleton, JJ. 28th April, 1939.

MENTAL DEFICIENCY—DEFECTIVE ORDERED TO BE SENT TO CERTIFIED INSTITUTION—PREVIOUS MAINTENANCE IN GENERAL HOSPITAL—WHETHER TO BE EXCLUDED IN DETERMINING PLACE OF RESIDENCE BEFORE ORDER—AUTHORITY RESPONSIBLE—MENTAL DEFICIENCY ACT, 1913 (3 & 4 Geo. 5, c. 28), ss. 43 (1), 44 (2)—MENTAL DEFICIENCY ACT, 1927 (17 & 18 Geo. 5, c. 33), s.9.

Appeal by case stated from a decision of a Metropolitan magistrate.

An application was made at Tower Bridge Police Court under s. 44 (3) of the Mental Deficiency Act, 1913, by an officer of Ipswich Corporation, claiming that their liability for a defective who, on a justice's order made in June, 1938, under the Lunacy Act, 1930, had been sent to a certified institution, should be transferred to the London County Council. The facts proved or admitted at the hearing of the application were as follows: The defective was born in London in 1917, and resided there with her father until 1937, when he died. She then had no relative responsible for her maintenance. In April, 1937, an aunt of the defective took her to live with her in Ipswich pending a decision as to her future. In October the aunt reported the case to the public assistance department of the respondents, and they in due course allowed the aunt 12s. 6d. a week for maintenance until the defective was removed from Ipswich. In the same month two justices ordered the removal of the defective to London, that being the place of her last legal settlement by virtue of her residence there with an irremovable parent. In November the corporation's public assistance department wrote to that of the council asking to what appropriate institution in London the defective should be removed, and as a result she was removed to St. Pancras (South) Hospital, a general hospital maintained by the appellants under the Public Health (London) Act, 1936. In December, 1937, the appropriate department of the council having informed the corporation that the defective had been deemed after examination to be feeble-minded within the meaning

of the Mental Deficiency Acts, the corporation repudiated the suggestion that they were responsible for her maintenance. In June, 1938, the council presented a petition before a justice for the County of London under the Lunacy Act, 1890, for an order sending the defective to a certified institution, and they named the corporation as the responsible authority, a contention which the respondents opposed. The order was made sending the defective to a certified institution in Kent and specifying Ipswich as her place of residence for the purposes of the Mental Deficiency Acts, 1913–27. By s. 43 (1) of the Act of 1913, " where a person is ordered to be sent to a certified institution . . . the local authority responsible for . . . that person shall be the . . . county or county borough in which he resided . . ." By s. 9 of the Act of 1927 a sub-section is added to s. 44 of the Act of 1913, which provides: " Where the order . . . is in respect of a person in an institution for lunatics, certified institution, approved home, or other public or charitable institution, that person shall . . . be deemed to have resided in the place which was his place of residence immediately before he was received into the institution or home . . ." The magistrate held that, before the order of June, 1938, the defective was resident in London, and that the council were therefore responsible for her. The council appealed.

Lord Hewart, C.J., said that it had been argued successfully before the magistrate that the words now in s. 44 " or other public or charitable institution " were *ejusdem generis* with the preceding words, " an institution for lunatics, certified institution, approved home," and therefore that the St. Pancras Hospital was not a " public or charitable institution " within the meaning of the section, and ought not to be excluded in deciding where the defective was resident before the order removing her to the certified institution in Kent. In his opinion the words " or other public or charitable institution " were designedly general. They followed on more specific words and meant " any other public or charitable institution." The test was not the nature or origin of the institution, but whether it was a public or charitable institution. Nothing in *Worcestershire County Council* v. *Warwickshire County Council*, [1934] 2 K.B. 288, lent support to the respondents' argument, and the appeal must be allowed.

Counsel: *R. M. Hughes; A. Capewell.*

Solicitors: *J. R. Howard Roberts; Sharpe, Pritchard and Co.*, for *The Town Clerk*, Ipswich.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Eaves *v.* Eaves.

Hodson, J. 19th, 28th April, 1939.

Divorce—Desertion—Separation Deed—Intention that Separation should be Temporary—Subsequent Marital Intercourse—Deed treated as Abandoned—Decree *Nisi*.

This was a wife's undefended petition for dissolution of marriage on the ground of desertion. The parties were married in 1928. In 1932, the husband decided to start a new profession which involved leaving Bristol, where they had been living, and his going to London. There had been no really serious differences, but the parties agreed, in order to secure the wife's position, to separate under a deed. Clause 7 provided that if the husband and wife should be reconciled and return to co-habitation, the stipulations of the deed should become void. It was recognised between the parties, notwithstanding the terms of the deed, that the situation was temporary. For a year after the separation, the husband's mother made payments on his behalf in compliance with the covenants in the deed. The husband never made any payments thereunder himself. The parties met frequently in London and elsewhere, and on some of the occasions they spent the night together and marital intercourse took place, the last occasion being in February, 1935. After February, 1935, the wife seldom saw the husband again, and when she did he manifested a desire to have no more to do with her. In November, 1938, she presented her petition. The court found that the wife was at all material times anxious that her husband should return to her. The question arose whether the deed of separation was in the circumstances a bar to the petition.

Hodson, J., in giving judgment, said that there was no doubt that the deed of separation of 1st February, 1932, was a consensual agreement, and the question was whether it ceased to have effect by reason of the operation of cl. 7, the husband having on a number of occasions, down to and including February, 1935, had marital intercourse with his wife. The fact that intercourse had taken place was not in itself conclusive evidence that the separation had come to an end so as to make the deed of no effect (*Rowell* v. *Rowell* [1900] 1 Q.B. 9; (1903), 89 L.T. 288). The court had to determine in a case such as the present whether there was any intention by the parties to come together again. In the words of Lord Russell of Killowen in *Rowell* v. *Rowell*, *supra*, at p. 13: " . . . if the court comes to the conclusion that there was an intention to come together again there would be an end of the deed." In contrast to *Rowell's Case*, *supra*, the evidence in the present case was all in favour of the contention put forward on behalf of the wife that the deed was at an end. At the time when the last act of intercourse took place, payments had long since ceased to have been made on behalf of the husband, and there was no indication that either party treated the deed as still in force. He (his lordship) did not hold that the acts of intercourse between the parties had been mere casual and isolated acts, but he found that they were, in the circumstances, evidence of a resumption of cohabitation sufficient to put an end to the deed, and, on the true construction of the deed, events had happened which had put an end to it. As from February, 1935, until the date of the institution of proceedings, the husband had deserted his wife, and she was entitled to a decree *nisi* on that ground.

Counsel: *B. M. Cloutman*, for the petitioner.

Solicitors: *Hewitt, Woollacott & Chown.*

[Reported by J. F. Compton-Miller, Esq., Barrister-at-Law.]

Societies.

The Hardwicke Society.

Annual Dinner.

The Hardwicke Society held its annual dinner at the Café Royal, on the 28th June. The chair was taken by Mr. Lewis F. Sturge, President of the Society.

The toast of The Hardwicke Society was proposed by Major-General Lord Mottistone. He said he had been invited in his early days at the Bar to join the Society, but had declined owing to lack of funds. He now offered to repair that omission and proffer himself for membership. He had occupied a place in the Law List so many years ago that no one was able to remember it. He had dined three times with Queen Victoria, and could therefore claim to be venerable. Had it not been for the disagreement between President Kruger and Mr. Joseph Chamberlain, he might quite conceivably now be holding the position occupied by Judge Sturges. Many years ago, Lord Morris, an Irish judge, had told him that when he was a junior at the Bar a friend of his had said that the best way of dealing with a jury was to flatter them. He thought he would put this advice into practice, and when defending a prisoner who was guilty of a particularly dreadful crime, he addressed the jury thus: " Anyone can see at a glance that you are the most intelligent body of men in all Ireland." The prosecuting counsel made a similar remark, and when the judge came to sum up the case he said: " Gentlemen of the jury, you have been told by the counsel for the prosecution and by the counsel for the defence that you are the most intelligent body of men in all Ireland. All I can tell you is that you may be, but you don't look it."

After the serious mutiny at Dartmoor Prison some years ago, Mr. Justice du Parcq, then K.C., was sent by the Home

Secretary to conduct an inquiry into the outbreak. Mr. du Parcq arrived, and said to the Governor: "I want to find out why this rioting occurred. I am boss now. I am going to do what I like." He walked about and saw as much as he could, and then he approached the Governor and told him he wanted to interview a particular prisoner by himself. The Governor demurred, and said that the prisoner was a pretty dreadful customer, but Mr. du Parcq insisted and walked into the man's cell. They sat down together on the edge of the bed, and Mr. du Parcq explained that he wished to find out exactly why the mutiny had taken place. The prisoner replied, "Well, sir, I am very glad to see you, because I am in a position to tell you all about it. I have spent forty years of my life here, and upon my word, I don't mind telling you I've not only come to know the place but to love it. You know, sir, the fact is that we haven't got the same class of men coming here as we used to have."

The Hardwicke Society performed a very useful service in debating all kinds of subjects, and many of his friends were among its most eminent debaters. It was good to think that the youngest member of the Society could put down any motion for discussion and defend it in argument if he could. He was more and more convinced that English and Scottish conceptions of law and justice were the ideal worth serving. It was wrong trying to divide the world into dictators, totalitarians and proletarians. The honesty, impartiality and justice of British law helped to hold up the lamp of civilisation, and the members of the Hardwicke Society were doing more than they knew for the well-being of their country.

Mr. LEWIS F. STURGE, the President, replying, said that the parentage and the exact date of birth of the Society were obscure, but that it was now a large and distinguished Society with something like 2,000 members. The office of President was rather transitory; like some bookmakers, the presidents were here to-day and gone to-morrow. The Treasurer kept proper accounts, and even a stock book with a detailed account of the purchase of alcoholic liquor. The Society met frequently and discussed every conceivable topic. Its proceedings were sometimes quite cosmopolitan, and members had recently debated the motion: "That the English are mad." In contrast to the House of Commons, they permitted classical quotations and encouraged direct statements. Owing to the demands of national service, the membership had suffered, and marriage had also taken its toll. Certain countries, notably Italy, were fond of asserting that the democracies could do nothing but talk, and that this country would go on talking till Doomsday. Italians were the lineal descendants of the ancient Romans, and they talked even more than we did. The Englishman disliked being talked to in a vast arena. The Hardwicke Society preferred to talk to itself, and he hoped that it would continue to meet even if it had to meet by candlelight in Oxford, Winchester or even Cambridge.

The health of The Bench and the Bar was proposed by Mr. RICHARD HUNT, Honorary Secretary of the Society, who said that it was with regret that he relinquished his cigar in order to make a speech. A distinguished judge had told a friend of his that he never took coffee with his lunch because he found that it caused insomnia on the Bench. The Bench was the only body of men who distinguished between a drink and a refresher and always chose the refresher. Judge Sturges was an enthusiastic horseman, and that was one of his best qualifications for the Bench, because, as Mr. Weller, senior, had said to his son, a man who was a good judge of a horse was a good judge of anything.

Judge STURGES, replying, recalled that he had been a guest of the Society fifty years before. He said that Lord Mottistone was so genial and charming a man that if he had been detained in his company at Dartmoor for forty years, he would have behaved himself quite well. Sir Charles Russell, who later became the great Lord Chief Justice, had said that societies such as the Hardwicke Society were very good things because they enabled a man to get on his legs and say what he wanted without getting flurried. Sir Charles was, however, an Irishman, and an Irishman could always say what he wanted to say and didn't much mind whether it was important or irrelevant.

There seemed to be quite a number of deaf judges when he was young, but they were none the less efficient. He remembered once that when counsel was speaking there was a terrific clap of thunder. Judge Field immediately called out: "Silence, silence! If I hear that noise again, I will have the court cleared." Contests between judges and counsel were numerous years ago. A case was being tried before a celebrated Irish judge, and during a pause in counsel's speech a donkey brayed loudly in the street. The judge remarked cuttingly, "One at a time, please," to which counsel retorted, "I beg your lordship's pardon; there is such an echo in this court that I could not hear what you were saying." Things were different nowadays, and judges and counsel were on the whole very polite to one another. Never before had the tie of friendship between Bench and Bar been stronger than it was at present. It was a source of immense satisfaction to every citizen to know that he was at liberty to take his case to law and that he would be assured of getting a fair and honest hearing.

Mr. F. A. MACQUISTEN, K.C., M.P., also replying to the toast of Bench and Bar, said he might be described as a K.C. square, as he was a solicitor in Scotland, a K.C. in Scotland and a K.C. in England. The Bar was a great defender of human liberty and an individualistic profession, where a man got on by his own efforts—a refreshing reflection in these days of combines, marketing boards and countless officials. Statute was not so good as common law. Statute was rather like having one's clothes made by a number of tailors, whereas common law was like a man's skin, always growing as he grew older. Scottish law, which was based not on common law or statute but on Roman law, enabled the poorest citizen to obtain justice. The great mass of the people of England did not have access to the courts because of the initial expense of a writ.

The health of the guests was proposed by Mr. NORMAN EDWARDS, Honorary Treasurer of the Society. He said he had been brought up in the old-fashioned way of keeping accounts: if the cash was less than the amount in the cash book, the person keeping the book had to pay it, but if the cash were more than the amount in the cash book, the accounts must be wrong.

Sir RALPH WEDGWOOD, C.B., C.M.G., replying to the toast, said that he hoped that the guests that evening were the same class of persons as the Society used to have. They had all partaken of an excellent dinner, and he believed that the good old habit of dining was one of the pillars of civilisation. It was necessary to defend civilisation against the inroads of barbarism. The Nordic man could forego his butter and content himself with substitute sausages and debased beer if he liked, but the Englishman preferred to dine well and in pleasant companionship. The legal profession had always believed in upholding this practice, and in its choice of food and drink stood for high ideals.

Parliamentary News.

Progress of Bills.

House of Lords.

Charitable Collections (Regulation) Bill.
In Committee. [4th July.

Civil Defence Bill.
Amendments reported. [4th July.

Coast Protection Bill.
Read Third Time. [4th July.

Colne Valley Water Bill.
Reported, with Amendments. [29th June.

Coventry Corporation Bill.
Read Second Time. [5th July.

Dundee Corporation Order Confirmation Bill.
Read Third Time. [4th July.

Dundee Harbour and Tay Ferries (Superannuation) Order Confirmation Bill.
Read Third Time. [4th July.

Hall-Marking of Foreign Plate Bill.
Read Second Time. [29th June.

Jarrow Corporation Bill.
Read Third Time. [29th June.

Local Government Amendment (Scotland) Bill.
Read Third Time. [4th July.

Marriage Bill.
Amendments reported. [4th July.

Merthyr Tydfil Corporation Bill.
Commons Amendments agreed to. [29th June.

Ministry of Health Provisional Order (Burnham and District Water) Bill.
Read Second Time. [5th July.

Ministry of Health Provisional Order (Corsham Water) Bill.
Reported, without Amendment. [4th July.

Ministry of Health Provisional Order (Hailsham Water) Bill.
Read Third Time. [29th June.

Ministry of Health Provisional Order (Hemel Hempstead Water) Bill.
Read Second Time. [5th July.

Ministry of Health Provisional Order (Heywood and Middleton Water Board) Bill.
Read Second Time. [5th July.

Ministry of Health Provisional Order (Luton Water) Bill.
Read Third Time. [29th June.

Ministry of Health Provisional Order (Newhaven and Seaford Water) Bill.
Reported, without Amendment. [4th July.
Ministry of Health Provisional Order (Oxford) Bill.
Read Second Time. [5th July.
Ministry of Health Provisional Order (Slough) Bill.
Read Second Time. [5th July.
Ministry of Health Provisional Order (South Kent Water) Bill.
Read Third Time. [29th June.
Ministry of Health Provisional Order (Swaffham Water) Bill.
Read Second Time. [5th July.
Ministry of Health Provisional Order (York Water) Bill.
Reported, without Amendment. [4th July.
Ministry of Supply Bill.
In Committee. [4th July.
Newquay and District Water Bill.
Read Second Time. [5th July.
North West Midlands Joint Electricity Authority Provisional Order Bill.
Read Second Time. [5th July.
Post Office and Telegraph (Money) Bill.
Read Second Time. [4th July.
Poultry Industry Bill.
Read Second Time. [29th June.
Riding Establishments Bill.
Read First Time. [4th July.
St. Helens Corporation (Trolley Vehicles) Provisional Order Bill.
Reported, without Amendment. [29th June.
Southend-on-Sea Corporation (Trolley Vehicles) Provisional Order Bill.
Reported, without Amendment. [29th June.
South Staffordshire Water Bill.
Read Third Time. [29th June.
Stalybridge Hyde Mossley and Dukinfield Transport and Electricity Board Bill.
Read Third Time. [29th June.
Tiverton Corporation Bill.
Read Third Time. [5th July.
Unemployment Insurance Bill.
Read Third Time. [4th July.
Walsall Corporation Bill.
Reported, with Amendments. [29th June.
Wheat (Amendment) Bill.
Amendments reported. [4th July.

House of Commons.

Access to Mountains Bill.
Lords Amendments Considered. [4th July.
Experiments on Dogs Bill.
Read First Time. [5th July.
Finance Bill.
Reported, with Amendments. [3rd July.
Folkestone Water Bill.
Read Second Time. [3rd July.
House of Commons Members Fund Bill.
Read First Time. [5th July.
Jarrow Corporation Bill.
Lords Amendments agreed to. [3rd July.
London County Council (Improvements) Bill.
Read Second Time. [3rd July.
Macclesfield Corporation Bill.
Read Second Time. [3rd July.
Marriage (Scotland) Bill.
Read Third Time. [3rd July.
Marriages Validity Bill.
Read Second Time. [5th July.
Merchandise Marks Bill.
Read First Time. [4th July.
Milford Haven and Tenby Water Bill.
Considered. [5th July.
Milk Industry (No. 2) Bill.
Read First Time. [29th June.
Ministry of Health Provisional Order Confirmation (Bacup) Bill.
Read Second Time. [5th July.
Ministry of Health Provisional Order Confirmation (North Lindsey Water Board) Bill.
Read Second Time. [5th July.
Ministry of Health Provisional Order Confirmation (Wembley) Bill.
Read Second Time. [5th July.
National Trust for Places of Historic Interest or Natural Beauty Bill.
Read Second Time. [3rd July.
Patents and Designs (Limits of Time) Bill.
Read Third Time. [3rd July.
Poor Law (Amendment) Bill.
Read First Time. [4th July.
Riding Establishments Bill.
Read Third Time. [3rd July.
Senior Public Elementary Schools (Liverpool) Bill.
Read First Time. [3rd July.
South Staffordshire Water Bill.
Lords Amendments agreed to. [3rd July.
Stalybridge Hyde Mossley and Dukinfield Transport and Electricity Board Bill.
Lords Amendments agreed to. [3rd July.
Stirling Burgh Order Confirmation Bill.
Considered. [5th July.

Legal Notes and News.

Honours and Appointments.

The King has approved the appointment of Sir HECTOR JAMES WRIGHT HETHERINGTON, Principal and Vice-Chancellor of Glasgow University, to be a Commissioner under the Development and Road Improvement Funds Acts, 1909 and 1910, with effect from 12th May, 1939, in succession to Sir William Stowell Haldane, W.S., whose term of office has ended. At the present time Sir Hector Hetherington is Chairman of a Commission on Workmen's Compensation.

The King, on the recommendation of the Lord Chancellor, has approved the appointment of Sir HERBERT BRENT GROTRIAN, K.C., as Chairman of the Bedfordshire Quarter Sessions, in accordance with the provisions of the Administration of Justice (Miscellaneous Provisions) Act, 1938. The appointment is to take effect from 19th June.

The King has approved a recommendation of the Home Secretary that Mr. ALFRED JAMES LONG, K.C., be appointed Recorder of West Bromwich in place of the late Mr. G. C. Lewis. Mr. Long was called to the Bar by Lincoln's Inn in 1915 and took silk in 1938. He was appointed Recorder of Smethwick in 1937.

The Lord Chancellor has appointed His Honour Judge AUSTIN JONES to sit as additional Judge at Westminster County Court, and to be the Judge at Uxbridge County Court (Circuit 34) in succession to his Honour Judge Dumas, who has retired.

The Lord Chancellor has appointed Mr. FRANCIS SAM BUTTER to be the Registrar of Bridgnorth, Madeley and Market Drayton County Court as from the 1st July last. Mr. Butter was admitted a solicitor in 1912.

Mr. THOMAS C. DAVIS, K.C., Attorney-General of Saskatchewan, has been appointed a Judge of the Court of Appeal in that Province.

Professional Announcements.

(2s. per line.)

Messrs. Allen & Overy, solicitors, announce that Mr. BRIAN DAVIDSON and Mr. L. RICHMOND SMITH, who have been associated with the firm for a considerable period, have been taken into partnership as from the 1st July, 1939.

Messrs. CLIFFORD-TURNER & Co., of 11, Old Jewry, E.C.2, and 44, Gresham Street, E.C.2, announce that as from the 1st July, 1939, they have taken into partnership Mr. LESLIE J. WILLIAMS, who has been associated with the firm for some years.

Notes.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton, will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Wednesday, the 26th July, 1939, at 10 a.m.

There are now 209 solicitors practising in Bristol—the same number as last year—according to the annual list issued by the Bristol Incorporated Law Society. Of that number, 170 are members of the Bristol Incorporated Law Society; 136 are members of The Law Society, and 117 are members of the Solicitors' Benevolent Association.

Judge Dumas was presented at Westminster County Court on Friday, 30th June, with several books on architecture, a subject in which he is keenly interested. The presentation was made by Mr. F. H. Adams on behalf of solicitors practising at the court, and Mrs. Dumas was handed a bouquet. Judge Sir Mordaunt Snagge, in paying tribute to Judge Dumas, said, although retiring officially, he would take his place among the reserve of judges who gave assistance in the courts of their former colleagues.

Depositions in a case at Brentford Police Court recently were taken down by the deputy-clerk, Mr. Bray, on a typewriter. Mr. Bray stated later that girls would use typewriters in future to help to speed up the law at Brentford and other Metropolitan Police Courts. "This also lessens the work of the officials at the other end when cases are sent for trial at the Old Bailey and county sessions," he said. "The majority of court clerks are such bad writers that the officials often have great difficulty in reading the depositions."

The Justiciary Appeal Court in Edinburgh recently dismissed the appeal in the test case on the question of what constitutes Scotch whisky. The court upheld the conviction of Henderson and Turnbull, Ltd., of Glasgow, who were found guilty in Glasgow Sheriff Court of having in a bonded warehouse in Glasgow "applied the false trade description 'Scots whisky' to 300 bottles of whisky containing whisky which was a blend of 33 per cent. Scotch whisky and 67 per cent. of Northern Irish whisky, contrary to the Merchandise Marks Act." The sheriff imposed a fine of £5.

As from 1st July last the working hours of young persons under sixteen in factories must not exceed forty-four a week, except in the case of industries for which a public inquiry has been directed by the Home Secretary into the question of allowing longer hours, and for which no decision has been reached as a result of the inquiry. In the case of the cotton, woollen and worsted, and carpet industries, draft regulations have now been issued to continue at forty-eight, the maximum weekly hours for young persons under sixteen employed in various processes, other than young persons under fifteen not employed in the processes prior to the coming into operation of the regulations. Copies of the reports of the Commissioners who held the public inquiries into these three industries are being sent to various bodies concerned, and further copies can be obtained on application to the Home Office.

H.M. LAND REGISTRY.

OFFICE COPIES OF THE REGISTER AND FILED PLAN.

The Chief Land Registrar wishes to inform Solicitors that office copies of the register can now be obtained from the Registry for 1s. 6d. and photographic office copies of the filed plan for 1s. each in all normal cases. Under s. 113 of the Land Registration Act, 1925, such office copies are admissible in evidence to the same extent as the originals and any person suffering loss owing to any error in them is entitled to be indemnified by the Registry.

Such office copies not only save vendors' Solicitors the trouble and cost of having themselves to make copies of the entries in the land certificate for the use of purchasers (and sometimes having to make a personal search at the Registry beforehand to enable them to do so) but when supplied to the purchasers' Solicitors save them the cost and trouble of having to make personal searches at the Registry for the purpose of comparing the copies supplied to them with the register and filed plan.

Such office copies can also be obtained by purchasers' Solicitors, when authorised to inspect the register, if not supplied to them by the vendor.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA. Mr.	APPEAL COURT No. 1. Mr.	MR. JUSTICE FARWELL. Mr.
July 10	Reader	Andrews	Blaker
,, 11	Andrews	Jones	More
,, 12	Jones	Ritchie	Reader
,, 13	Ritchie	Blaker	Andrews
,, 14	Blaker	More	Jones
,, 15	More	Reader	Ritchie

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS.	MR. JUSTICE CROSSMAN.	MR. JUSTICE MORTON.
DATE.	Witness. Mr.	Non-Witness. Mr.	Witness. Mr.	Non-Witness. Mr.
July 10	Reader	Jones	Ritchie	More
,, 11	Andrews	Ritchie	Blaker	Reader
,, 12	Jones	Blaker	More	Andrews
,, 13	Ritchie	More	Reader	Jones
,, 14	Blaker	Reader	Andrews	Ritchie
,, 15	More	Andrews	Jones	Blaker

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 20th July 1939.

	Div. Months.	Middle Price 5 July 1939.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	102⅞	3 17 10	3 15 9
Consols 2½%	JAJO	67½	3 14 1	—
War Loan 3½% 1952 or after	JD	93⅝	3 14 9	—
Funding 4% Loan 1960-90	MN	106½	3 15 1	3 11 2
Funding 3% Loan 1959-69	AO	92⅛	3 4 10	3 8 1
Funding 2¾% Loan 1952-57	JD	90½	3 0 9	3 9 4
Funding 2½% Loan 1956-61	AO	84¼	2 19 4	3 10 11
Victory 4% Loan Av. life 21 years	MS	106	3 15 6	3 11 10
Conversion 5% Loan 1944-64	MN	109	4 11 9	2 16 5
Conversion 3½% Loan 1961 or after	AO	94½	3 14 1	—
Conversion 3% Loan 1948-53	MS	97	3 1 10	3 5 5
Conversion 2½% Loan 1944-49	AO	96½	2 11 10	2 18 2
National Defence Loan 3% 1954-58	JJ	93½	3 4 2	3 9 1
Local Loans 3% Stock 1912 or after	JAJO	79½	3 15 6	—
Bank Stock	AO	312	3 16 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	75	3 13 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	81	3 14 1	—
India 4½% 1950-55	MN	105½	4 5 4	3 17 6
India 3½% 1931 or after	JAJO	82½	4 4 10	—
India 3% 1948 or after	JAJO	70	4 5 9	—
Sudan 4½% 1939-73 Av. life 27 years	FA	106xd	4 4 11	4 2 6
Sudan 4% 1974 Red. in part after 1950	MN	103¼	3 17 4	3 12 3
Tanganyika 4% Guaranteed 1951-71	FA	103xd	3 17 8	3 13 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	102½	4 7 10	3 8 7
Lon. Elec. T. F. Corpn. 2¼% 1950-55	FA	85¼xd	2 18 6	3 13 2
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	95¼	4 3 9	4 5 3
Australia (Commonw'th) 3% 1955-58	AO	81½	3 13 7	4 9 3
*Canada 4% 1953-58	MS	106	3 15 6	3 9 0
Natal 3% 1929-49	JJ	95½	3 2 10	3 11 10
New South Wales 3½% 1930-50	JJ	91	3 16 11	4 11 2
New Zealand 3% 1945	AO	87	3 9 0	5 17 2
Nigeria 4% 1963	AO	105½	3 15 10	3 13 0
Queensland 3½% 1950-70	JJ	86	4 1 5	4 6 10
South Africa 3½% 1953-73	JD	96	3 12 11	3 14 2
Victoria 3½% 1929-49	AO	91	3 16 11	4 12 11
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	78½	3 16 5	—
Croydon 3% 1940-60	AO	90	3 6 8	3 13 9
Essex County 3½% 1952-72	JD	96½	3 12 6	3 13 9
Leeds 3% 1927 or after	JJ	77	3 17 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	90	3 17 9	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	64	3 18 2	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	77	3 17 11	—
Manchester 3% 1941 or after	FA	76½xd	3 18 5	—
Metropolitan Consd. 2½% 1920-49	MJSD	94	2 13 2	3 4 2
Metropolitan Water Board 3% "A" 1963-2003	AO	81½	3 13 7	3 15 2
Do. do. 3% "B" 1934-2003	MS	81	3 14 1	3 15 10
Do. do. 3% "E" 1953-73	JJ	90½	3 6 4	3 9 7
*Middlesex County Council 4% 1952-72	MN	104	3 16 11	3 12 3
* Do. do. 4½% 1950-70	MN	107	4 4 1	3 14 3
Nottingham 3% Irredeemable	MN	78	3 16 11	—
Sheffield Corp. 3½% 1968	JJ	97	3 12 2	3 13 4
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	94½	4 4 8	—
Gt. Western Rly. 4½% Debenture	JJ	102½	4 7 10	—
Gt. Western Rly. 5% Debenture	JJ	112½	4 8 11	—
Gt. Western Rly. 5% Rent Charge	FA	109½	4 11 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	105	4 15 3	—
Gt. Western Rly. 5% Preference	MA	89	5 12 4	—
Southern Rly. 4% Debenture	JJ	93½	4 5 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 3
Southern Rly. 5% Guaranteed	MA	110	4 10 11	—
Southern Rly. 5% Preference	MA	94½	5 5 10	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.